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Part 1

General Provisions

70-1-101. Property defined — ownership. The ownership of a thing is the right of one or more persons to possess and use it to the exclusion of others. In this code, the thing of which there may be ownership is called property.

History: En. Sec. 1070, Civ. C. 1895; re-en. Sec. 4421, Rev. C. 1907; re-en. Sec. 6663, R.C.M. 1921; Cal. Civ. C. Sec. 654; Field Civ. C. Sec. 159; re-en. Sec. 6663, R.C.M. 1935; R.C.M. 1947, 67-201.

70-1-102. Ownership public or private — state as private proprietor. All property has an owner, whether that owner is the state and the property public or the owner an individual and the property private. The state may also hold property as a private proprietor.

History: En. Sec. 1090, Civ. C. 1895; re-en. Sec. 4431, Rev. C. 1907; re-en. Sec. 6673, R.C.M. 1921; Cal. Civ. C. Sec. 669; Field Civ. C. Sec. 168; re-en. Sec. 6673, R.C.M. 1935; R.C.M. 1947, 67-301.

70-1-103. Owner entitled to products and accessions. The owner of a thing also owns all of its products and accessions.

History: En. Sec. 1170, Civ. C. 1895; re-en. Sec. 4472, Rev. C. 1907; re-en. Sec. 6714, R.C.M. 1921; Cal. Civ. C. Sec. 732; Field Civ. C. Sec. 209; re-en. Sec. 6714, R.C.M. 1935; R.C.M. 1947, 67-415.

70-1-104. In what things property interests may exist. There may be ownership of:

(1) all inanimate things which are capable of appropriation or of manual delivery;

(2) all domestic animals;

(3) all obligations;

(4) such products of labor or skill as the composition of an author, the goodwill of a business, trademarks, and signs; and

(5) rights created or granted by statute.

History: En. Sec. 1071, Civ. C. 1895; re-en. Sec. 4422, Rev. C. 1907; re-en. Sec. 6664, R.C.M. 1921; Cal. Civ. C. Sec. 655; Field Civ. C. Sec. 160; re-en. Sec. 6664, R.C.M. 1935; R.C.M. 1947, 67-202.

70-1-105. Real or personal. Property is either:

(1) real or immovable; or

(2) personal or movable.

History: En. Sec. 1073, Civ. C. 1895; re-en. Sec. 4424, Rev. C. 1907; re-en. Sec. 6666, R.C.M. 1921; Cal. Civ. C. Sec. 657; Field Civ. C. Sec. 162; re-en. Sec. 6666, R.C.M. 1935; R.C.M. 1947, 67-206.

70-1-106. Real property defined. Real or immovable property consists of:

(1) land;

(2) that which is affixed to land;

(3) that which is incidental or appurtenant to land;

(4) that which is immovable by law.

History: En. Sec. 1074, Civ. C. 1895; re-en. Sec. 4425, Rev. C. 1907; re-en. Sec. 6667, R.C.M. 1921; Cal. Civ. C. Sec. 658; Based on Field Civ. C. Sec. 163; re-en. Sec. 6667, R.C.M. 1935; R.C.M. 1947, 67-207.

70-1-107. Choice of law as to real property. Real property within this state is governed by the law of this state, except where the title is in the United States.

History: En. Sec. 1200, Civ. C. 1895; re-en. Sec. 4480, Rev. C. 1907; re-en. Sec. 6722, R.C.M. 1921; Cal. Civ. C. Sec. 755; re-en. Sec. 6722, R.C.M. 1935; R.C.M. 1947, 67-501.

70-1-108. Personal property defined. Every kind of property that is not real is personal.

History: En. Sec. 1079, Civ. C. 1895; re-en. Sec. 4430, Rev. C. 1907; re-en. Sec. 6672, R.C.M. 1921; Cal. Civ. C. Sec. 663; Field Civ. C. Sec. 167; re-en. Sec. 6672, R.C.M. 1935; R.C.M. 1947, 67-212.

70-1-109. Choice of law as to personal property. If there is no law to the contrary in the place where personal property is situated, it is deemed to follow the person of its owner and is governed by the law of his domicile.

History: En. Sec. 1340, Civ. C. 1895; re-en. Sec. 4556, Rev. C. 1907; re-en. Sec. 6803, R.C.M. 1921; Cal. Civ. C. Sec. 946; Field Civ. C. Sec. 364; re-en. Sec. 6803, R.C.M. 1935; R.C.M. 1947, 67-1101.

70-1-110. How property acquired. Property is acquired by:

(1) occupancy;
(2) accession;
(3) transfer;
(4) will; or
(5) succession.

History: En. Sec. 1380, Civ. C. 1895; re-en. Sec. 4569, Rev. C. 1907; re-en. Sec. 6816, R.C.M. 1921; Cal. Civ. C. Sec. 1000; re-en. Sec. 6816, R.C.M. 1935; R.C.M. 1947, 67-1201.

Part 2

General Rights of State Over Property

70-1-201. Original and ultimate title. The original and ultimate right of all property, real and personal, within the jurisdiction of this state and not belonging to the United States is in the people of the state.

History: En. Sec. 60, Pol. C. 1895; re-en. Sec. 26, Rev. C. 1907; re-en. Sec. 27, R.C.M. 1921; Cal. Pol. C. Sec. 40; re-en. Sec. 27, R.C.M. 1935; R.C.M. 1947, 67-101.

70-1-202. Property of the state — what included. The state is the owner of:

(1) all land below the water of a navigable lake or stream;
(2) all property lawfully appropriated by it to its own use;
(3) all property dedicated or granted to the state; and
(4) all property of which there is no other owner.

History: En. Sec. 1091, Civ. C. 1895; re-en. Sec. 4432, Rev. C. 1907; re-en. Sec. 6674, R.C.M. 1921; Cal. Civ. C. Sec. 670; Based on Field Civ. C. Sec. 169; re-en. Sec. 6674, R.C.M. 1935; R.C.M. 1947, 67-302.

70-1-203. Escheat. Whenever the title to any property fails for want of heirs or next of kin, it reverts to the state. All property within the limits of this state which does not belong to any person belongs to the state.

History: En. Sec. 61, Pol. C. 1895; re-en. Sec. 27, Rev. C. 1907; re-en. Sec. 28, R.C.M. 1921; Cal. Pol. C. Sec. 41; re-en. Sec. 28, R.C.M. 1935; R.C.M. 1947, 67-102.

70-1-204. Acquisition by taxation. The state or any county thereof may acquire property by taxation in the modes authorized by law.

History: En. Sec. 62, Pol. C. 1895; re-en. Sec. 28, Rev. C. 1907; re-en. Sec. 29, R.C.M. 1921; Cal. Pol. C. Sec. 43; re-en. Sec. 29, R.C.M. 1935; R.C.M. 1947, 67-103.

70-1-205. Eminent domain. The state may acquire or authorize others to acquire title to property, real or personal, for public use, in the cases and in the modes provided in chapter 30 of this title.

History: En. Sec. 63, Pol. C. 1895; re-en. Sec. 29, Rev. C. 1907; re-en. Sec. 30, R.C.M. 1921; Cal. Pol. C. Sec. 44; re-en. Sec. 30, R.C.M. 1935; R.C.M. 1947, 67-104.

Part 3

Kinds of Ownership Interests

70-1-301. Interests in real property specially named elsewhere. In respect to real or immovable property, the interests mentioned in this part are denominated estates and are specially named and classified in 70-15-202 through 70-17-111 and in Title 72, chapter 24.

History: En. Sec. 1122, Civ. C. 1895; re-en. Sec. 4455, Rev. C. 1907; re-en. Sec. 6697, R.C.M. 1921; Cal. Civ. C. Sec. 701; Field Civ. C. Sec. 193; re-en. Sec. 6697, R.C.M. 1935; R.C.M. 1947, 67-327.

70-1-302. Ownership — absolute or qualified. The ownership of property is either:

(1) absolute; or

(2) qualified.

History: En. Sec. 1100, Civ. C. 1895; re-en. Sec. 4433, Rev. C. 1907; re-en. Sec. 6675, R.C.M. 1921; Cal. Civ. C. Sec. 678; Field Civ. C. Sec. 171; re-en. Sec. 6675, R.C.M. 1935; R.C.M. 1947, 67-303.

70-1-303. When ownership absolute. The ownership of property is absolute when a single person has the absolute dominion over it and may use it or dispose of it according to his pleasure, subject only to general laws.

History: En. Sec. 1101, Civ. C. 1895; re-en. Sec. 4434, Rev. C. 1907; re-en. Sec. 6676, R.C.M. 1921; Cal. Civ. C. Sec. 679; Field Civ. C. Sec. 172; re-en. Sec. 6676, R.C.M. 1935; R.C.M. 1947, 67-304.

70-1-304. When ownership qualified. The ownership of property is qualified when:

(1) it is shared with one or more persons;

(2) the time of enjoyment is deferred or limited;

(3) the use is restricted.

History: En. Sec. 1102, Civ. C. 1895; re-en. Sec. 4435, Rev. C. 1907; re-en. Sec. 6677, R.C.M. 1921; Cal. Civ. C. Sec. 680; Field Civ. C. Sec. 173; re-en. Sec. 6677, R.C.M. 1935; R.C.M. 1947, 67-305.

70-1-305. Ownership by single person. The ownership of property by a single person is designated as a sole or several ownership.

History: En. Sec. 1103, Civ. C. 1895; re-en. Sec. 4436, Rev. C. 1907; re-en. Sec. 6678, R.C.M. 1921; Cal. Civ. C. Sec. 681; Field Civ. C. Sec. 174; re-en. Sec. 6678, R.C.M. 1935; R.C.M. 1947, 67-306.

70-1-306. Ownership by several persons — types. The ownership of property by several persons is either of:

(1) joint interests;

(2) partnership interests;

(3) interests in common.

History: En. Sec. 1104, Civ. C. 1895; re-en. Sec. 4437, Rev. C. 1907; re-en. Sec. 6679, R.C.M. 1921; Cal. Civ. C. Sec. 682; Field Civ. C. Sec. 175; re-en. Sec. 6679, R.C.M. 1935; R.C.M. 1947, 67-307.

70-1-307. Joint interest defined. A joint interest is one owned by several persons in equal shares by a title created by a single will or transfer, when expressly declared in the will or transfer to be a joint tenancy or when granted or devised to executors or trustees as joint tenants.

History: En. Sec. 1105, Civ. C. 1895; re-en. Sec. 4438, Rev. C. 1907; re-en. Sec. 6680, R.C.M. 1921; Cal. Civ. C. Sec. 683; Based on Field Civ. C. Sec. 176; re-en. Sec. 6680, R.C.M. 1935; R.C.M. 1947, 67-308.

70-1-308. Safe deposit box — joint tenancy. When so specified in the agreement granting for a term of time the right in two or more persons to use or occupy any safe or box, commonly referred to as a safe deposit vault or box for the safekeeping of valuables, such interest and estate created in the grantees shall be a joint tenancy in such vault or box and pass to the survivors and survivor upon the death of one or more of the joint tenants with right in such survivors and survivor to have access to and possession of such vault or box and the contents thereof under the terms of the agreement.

History: En. Sec. 1, Ch. 62, L. 1939; R.C.M. 1947, 67-309.

70-1-309. Distribution when joint tenant fails to survive by 120 hours. (1) Whenever property is held in joint tenancy by two joint tenants and the joint tenants die within 120 hours of each other or it cannot be determined whether one survived the other by 120 hours, the property shall be distributed one-half to the estate of one joint tenant and one-half to the estate of the other joint tenant.

(2) Whenever property is held in joint tenancy by more than two joint tenants and the last surviving joint tenant does not survive all of the other joint tenants by 120 hours or it cannot be determined whether he so survived for 120 hours, the property shall be distributed equally among the estates of the last surviving joint tenant and the joint tenants which he failed to survive by 120 hours.

History: En. 67-308.1 by Sec. 1, Ch. 75, L. 1977; R.C.M. 1947, 67-308.1.

70-1-310. Action by or against joint tenants or tenants in common. All persons holding as tenants in common, joint tenants, or any number less than all may jointly or severally commence or defend any civil action or proceeding for the enforcement or protection of the rights of such party. In all cases one tenant in common or joint tenant can sue his cotenant.

History: En. Sec. 21, p. 43, L. 1877; re-en. Sec. 21, 1st Div. Rev. Stat. 1879; re-en. Sec. 21, 1st Div. Comp. Stat. 1887; amd. Sec. 586, C. Civ. Proc. 1895; re-en. Sec. 6493, Rev. C. 1907; re-en. Sec. 9085, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 384; re-en. Sec. 9085, R.C.M. 1935; R.C.M. 1947, 93-2823.

70-1-311. Abuse of property held jointly or in common — action — mining property. If any person shall assume and exercise exclusive ownership over or take away, destroy, lessen in value, or otherwise injure or abuse any property held in joint tenancy or tenancy in common, the party aggrieved shall have his action for the injury in the same manner as he would have if such joint tenancy or tenancy in common did not exist; provided that nothing herein contained shall prevent one cotenant or joint tenant or any number of cotenants or joint tenants acting together less than all from entering on the common property at any point or points not then in the actual occupancy of the nonjoining cotenants or joint tenants and enjoying all rights of occupancy of the property, without waste and, in the case of mining property, from mining the same in a minerlike manner and extracting, milling, and disposing of the ore from the common property, paying its or their own expenses and subject to accounting to the nonjoining cotenant or joint tenant for the net profits of such mining operations, if any made, and all liens for labor and materials incurred in such mining shall attach only to the undivided interest or interests of the working cotenants or joint tenants, but nothing herein shall prevent or preclude the cotenant or joint tenant, not joining in the operation of such mining property, from receiving his, its, or their proportionate share of all ore or ores on the dump upon payment or tendering payment of the actual cost of mining the same.

History: En. Sec. 2, p. 454, Bannack Stat.; re-en. Sec. 2, p. 504, Cod. Stat. 1871; re-en. Sec. 771, 5th Div. Rev. Stat. 1879; re-en. Sec. 1285, 5th Div. Comp. Stat. 1887; amd. Sec. 592, C. Civ. Proc. 1895; en. Sec. 1, p. 134, L. 1899; re-en. Sec. 6499, Rev. C. 1907; re-en. Sec. 9091, R.C.M. 1921; re-en. Sec. 9091, R.C.M. 1935; R.C.M. 1947, 93-2829.

70-1-312. Partnership interest defined. A partnership interest is one owned by several persons in partnership for partnership purposes.

History: En. Sec. 1106, Civ. C. 1895; re-en. Sec. 4439, Rev. C. 1907; re-en. Sec. 6681, R.C.M. 1921; Cal. Civ. C. Sec. 684; Field Civ. C. Sec. 177; re-en. Sec. 6681, R.C.M. 1935; R.C.M. 1947, 67-311.

70-1-313. Interest in common defined. An interest in common is one owned by several persons, not in joint ownership or partnership.

History: En. Sec. 1107, Civ. C. 1895; re-en. Sec. 4440, Rev. C. 1907; re-en. Sec. 6682, R.C.M. 1921; Cal. Civ. C. Sec. 685; Field Civ. C. Sec. 178; re-en. Sec. 6682, R.C.M. 1935; R.C.M. 1947, 67-312.

70-1-314. Interest in common — how created. Every interest created in favor of several persons in their own right, including husband and wife, is an interest in common unless acquired by them in partnership for partnership purposes or unless declared in its creation to be a joint interest, as provided in 70-1-307.

History: En. Sec. 1108, Civ. C. 1895; re-en. Sec. 4441, Rev. C. 1907; re-en. Sec. 6683, R.C.M. 1921; Cal. Civ. C. Sec. 686; Based on Field Civ. C. Sec. 179; re-en. Sec. 6683, R.C.M. 1935; R.C.M. 1947, 67-313.

70-1-315. Interest as to time of enjoyment. In respect to the time of enjoyment, an interest in property is either:

(1) present or future; and

(2) perpetual or limited.

History: En. Sec. 1109, Civ. C. 1895; re-en. Sec. 4442, Rev. C. 1907; re-en. Sec. 6684, R.C.M. 1921; Cal. Civ. C. Sec. 688; Field Civ. C. Sec. 180; re-en. Sec. 6684, R.C.M. 1935; R.C.M. 1947, 67-314.

70-1-316. Present interest — to what entitles owner. A present interest entitles the owner to the immediate possession of the property.

History: En. Sec. 1110, Civ. C. 1895; re-en. Sec. 4443, Rev. C. 1907; re-en. Sec. 6685, R.C.M. 1921; Cal. Civ. C. Sec. 689; Field Civ. C. Sec. 181; re-en. Sec. 6685, R.C.M. 1935; R.C.M. 1947, 67-315.

70-1-317. Future interest — to what entitles owner. A future interest entitles the owner to the possession of the property only at a future period.

History: En. Sec. 1111, Civ. C. 1895; re-en. Sec. 4444, Rev. C. 1907; re-en. Sec. 6686, R.C.M. 1921; Cal. Civ. C. Sec. 690; Field Civ. C. Sec. 182; re-en. Sec. 6686, R.C.M. 1935; R.C.M. 1947, 67-316.

70-1-318. What future interests recognized. No future interest in property is recognized by the law, except such as is defined in this code.

History: En. Sec. 1124, Civ. C. 1895; re-en. Sec. 4457, Rev. C. 1907; re-en. Sec. 6699, R.C.M. 1921; Cal. Civ. C. Sec. 703; Field Civ. C. Sec. 195; re-en. Sec. 6699, R.C.M. 1935; R.C.M. 1947, 67-329.

70-1-319. Mere possibility not an interest. A mere possibility, such as the expectancy of an heir apparent, is not to be deemed an interest of any kind.

History: En. Sec. 1121, Civ. C. 1895; re-en. Sec. 4454, Rev. C. 1907; re-en. Sec. 6696, R.C.M. 1921; Cal. Civ. C. Sec. 700; Field Civ. C. Sec. 192; re-en. Sec. 6696, R.C.M. 1935; R.C.M. 1947, 67-326.

70-1-320. Perpetual interest — duration. A perpetual interest has a duration equal to that of the property.

History: En. Sec. 1112, Civ. C. 1895; re-en. Sec. 4445, Rev. C. 1907; re-en. Sec. 6687, R.C.M. 1921; Cal. Civ. C. Sec. 691; Field Civ. C. Sec. 183; re-en. Sec. 6687, R.C.M. 1935; R.C.M. 1947, 67-317.

70-1-321. Limited interest — duration. A limited interest has a duration of less than that of the property.

History: En. Sec. 1113, Civ. C. 1895; re-en. Sec. 4446, Rev. C. 1907; re-en. Sec. 6688, R.C.M. 1921; Cal. Civ. C. Sec. 692; Field Civ. C. Sec. 184; re-en. Sec. 6688, R.C.M. 1935; R.C.M. 1947, 67-318.

70-1-322. Kinds of future interests. A future interest is either:

(1) vested; or

(2) contingent.

History: En. Sec. 1114, Civ. C. 1895; re-en. Sec. 4447, Rev. C. 1907; re-en. Sec. 6689, R.C.M. 1921; Cal. Civ. C. Sec. 693; Field Civ. C. Sec. 185; re-en. Sec. 6689, R.C.M. 1935; R.C.M. 1947, 67-319.

70-1-323. Future interest — when vested. A future interest is vested when there is a person in being who would have a right, defeasible or indefeasible, to the immediate possession of the property upon the ceasing of the intermediate or precedent interest.

History: En. Sec. 1115, Civ. C. 1895; re-en. Sec. 4448, Rev. C. 1907; re-en. Sec. 6690, R.C.M. 1921; Cal. Civ. C. Sec. 694; Field Civ. C. Sec. 186; re-en. Sec. 6690, R.C.M. 1935; R.C.M. 1947, 67-320.

70-1-324. Future interest — when contingent. A future interest is contingent whilst the person in whom or the event upon which it is limited to take effect remains uncertain.

History: En. Sec. 1116, Civ. C. 1895; re-en. Sec. 4449, Rev. C. 1907; re-en. Sec. 6691, R.C.M. 1921; Cal. Civ. C. Sec. 695; Field Civ. C. Sec. 187; re-en. Sec. 6691, R.C.M. 1935; R.C.M. 1947, 67-321.

70-1-325. Two or more alternative future interests. Two or more future interests may be created to take effect in the alternative so that if the first in order fails to vest, the next in succession shall be substituted for it and take effect accordingly.

History: En. Sec. 1117, Civ. C. 1895; re-en. Sec. 4450, Rev. C. 1907; re-en. Sec. 6692, R.C.M. 1921; Cal. Civ. C. Sec. 696; Field Civ. C. Sec. 188; re-en. Sec. 6692, R.C.M. 1935; R.C.M. 1947, 67-322.

70-1-326. Future interests — how passed. Future interests pass by succession, will, and transfer in the same manner as present interests.

History: En. Sec. 1120, Civ. C. 1895; re-en. Sec. 4453, Rev. C. 1907; re-en. Sec. 6695, R.C.M. 1921; Cal. Civ. C. Sec. 699; Field Civ. C. Sec. 191; re-en. Sec. 6695, R.C.M. 1935; R.C.M. 1947, 67-325.

Part 4

Conditions and Limitations of Ownership

70-1-401. Fixing time of enjoyment — computation — condition. The time when the enjoyment of property is to begin or end may be determined by computation, or be made to depend on event. In the latter case, the enjoyment is said to be upon condition.

History: En. Sec. 1140, Civ. C. 1895; re-en. Sec. 4458, Rev. C. 1907; re-en. Sec. 6700, R.C.M. 1921; Cal. Civ. C. Sec. 707; Field Civ. C. Sec. 196; re-en. Sec. 6700, R.C.M. 1935; R.C.M. 1947, 67-401.

70-1-402. Kinds of conditions. Conditions are precedent or subsequent. The former fix the beginning, the latter the ending, of the right.

History: En. Sec. 1141, Civ. C. 1895; re-en. Sec. 4459, Rev. C. 1907; re-en. Sec. 6701, R.C.M. 1921; Cal. Civ. C. Sec. 708; Field Civ. C. Sec. 197; re-en. Sec. 6701, R.C.M. 1935; R.C.M. 1947, 67-402.

70-1-403. Condition precedent requiring wrongful act. If a condition precedent requires the performance of an act wrong of itself, the instrument containing it is so far void and the right cannot exist. If it requires the performance of an act not wrong of itself, but otherwise unlawful, the instrument takes effect and the condition is void.

History: En. Sec. 1142, Civ. C. 1895; re-en. Sec. 4460, Rev. C. 1907; re-en. Sec. 6702, R.C.M. 1921; Cal. Civ. C. Sec. 709; Field Civ. C. Sec. 198; re-en. Sec. 6702, R.C.M. 1935; R.C.M. 1947, 67-403.

70-1-404. Conditions restraining marriage void. Conditions imposing restraints upon marriage, except upon the marriage of a minor, are void, but this does not affect limitations where the intent was not to forbid marriage but only to give the use until marriage.

History: En. Sec. 1143, Civ. C. 1895; re-en. Sec. 4461, Rev. C. 1907; re-en. Sec. 6703, R.C.M. 1921; Cal. Civ. C. Sec. 710; Based on Field Civ. C. Sec. 199; re-en. Sec. 6703, R.C.M. 1935; R.C.M. 1947, 67-404.

70-1-405. Conditions restraining alienation void. Conditions restraining alienation, when repugnant to the interest created, are void.

History: En. Sec. 1144, Civ. C. 1895; re-en. Sec. 4462, Rev. C. 1907; re-en. Sec. 6704, R.C.M. 1921; Cal. Civ. C. Sec. 711; Field Civ. C. Sec. 200; re-en. Sec. 6704, R.C.M. 1935; R.C.M. 1947, 67-405.

70-1-406. How long power of alienation may be suspended. The absolute power of alienation cannot be suspended by any limitation or condition whatever for a period longer than 21 years after some life in being at the creation of the interest and any period of gestation involved in the situation to which the limitation applies. The lives selected to govern the time of suspension must not be so numerous or so situated that evidence of their deaths is likely to be unreasonably difficult to obtain.

History: **En. Sec. 1150, Civ. C. 1895; re-en. Sec. 4463, Rev. C. 1907; re-en. Sec. 6705, R.C.M. 1921; Cal. Civ. C. Sec. 715; Based on Field Civ. C. Sec. 201; re-en. Sec. 6705, R.C.M. 1935; amd. Sec. 1, Ch. 213, L. 1959; R.C.M. 1947, 67-406(a).**

70-1-407. Future interests suspending power of alienation void. Every future interest is void in its creation which by any possibility may suspend the absolute power of alienation for a longer period than is prescribed in this part. Such power of alienation is suspended when there are no persons in being by whom an absolute interest in possession can be conveyed.

History: **En. Sec. 1151, Civ. C. 1895; re-en. Sec. 4464, Rev. C. 1907; re-en. Sec. 6706, R.C.M. 1921; Cal. Civ. C. Sec. 716; Field Civ. C. Sec. 202; re-en. Sec. 6706, R.C.M. 1935; amd. Sec. 2, Ch. 213, L. 1959; R.C.M. 1947, 67-407(part).**

70-1-408. When interest must vest — rule against perpetuities. (1) No interest in real or personal property is good unless it must vest, if at all, not later than 21 years after some life in being at the creation of the interest and any period of gestation involved in the situation to which the limitation applies. The lives selected to govern the time of vesting must not be so numerous or so situated that evidence of their deaths is likely to be unreasonably difficult to obtain.

(2) It is intended by the enactment of this statute to make effective in this state the American common-law rule against perpetuities.

History: **En. Sec. 1150, Civ. C. 1895; re-en. Sec. 4463, Rev. C. 1907; re-en. Sec. 6705, R.C.M. 1921; Cal. Civ. C. Sec. 715; Based on Field Civ. C. Sec. 201; re-en. Sec. 6705, R.C.M. 1935; amd. Sec. 1, Ch. 213, L. 1959; R.C.M. 1947, 67-406(b); amd. Sec. 1, Ch. 338, L. 1979.**

70-1-409. Period of destructibility of interest not to be considered. The period of time during which an interest is destructible pursuant to the uncontrolled volition and for the exclusive personal benefit of the person having such a power of destruction is not to be included in determining the existence of a suspension of the absolute power of alienation or the permissible period for the vesting of an interest within the rule against perpetuities.

History: **En. Sec. 1151, Civ. C. 1895; re-en. Sec. 4464, Rev. C. 1907; re-en. Sec. 6706, R.C.M. 1921; Cal. Civ. C. Sec. 716; Field Civ. C. Sec. 202; re-en. Sec. 6706, R.C.M. 1935; amd. Sec. 2, Ch. 213, L. 1959; R.C.M. 1947, 67-407(part).**

70-1-410. Power of alienation as to trust — suspension. The suspension of all power to alienate the subject of a trust, other than a power to exchange it for other property to be held upon the same trust or to sell it and reinvest the proceeds to be held upon the same trust, is a suspension of the power of alienation within the meaning of 70-1-406.

History: **En. Sec. 1220, Civ. C. 1895; re-en. Sec. 4491, Rev. C. 1907; re-en. Sec. 6733, R.C.M. 1921; Cal. Civ. C. Sec. 771; Field Civ. C. Sec. 228; re-en. Sec. 6733, R.C.M. 1935; R.C.M. 1947, 67-512.**

70-1-411. Pension trusts — restrictive rules inapplicable. (1) No statutory or common-law rule or provision relating to restraints against alienation, suspension of the power of alienation, accumulations of income, perpetuities, or remoteness of vesting shall apply to any trust created as part of a pension, retirement, insurance, savings, stock bonus, profit-sharing, or similar plan established or maintained for the benefit of employees, eligible to participate in such plan, of an employer or of a group of employers or for the benefit of the members, eligible to participate in such plan, of any labor union or of any other association or group of employees or for the benefit of other beneficiaries eligible to participate in such plan.

(2) Any such trust shall be valid, notwithstanding any such statutory or common-law rule or provision, which but for this section might otherwise be applicable to and invalidate such trust.

History: **En. Secs. 1, 2, Ch. 214, L. 1959; R.C.M. 1947, 67-423, 67-424.**

70-1-412. Income of property defined. The income of property, as the term is used in this part, includes the rents and profits of real property, the interest of money, dividends upon stock, and other produce of personal property.

History: **En. Sec. 1190, Civ. C. 1895; re-en. Sec. 4478, Rev. C. 1907; re-en. Sec. 6720, R.C.M. 1921; Cal. Civ. C. Sec. 748; Field Civ. C. Sec. 215; re-en. Sec. 6720, R.C.M. 1935; R.C.M. 1947, 67-421.**

70-1-413. Dispositions of income generally — future interest rules applicable. Dispositions of the income of the property to accrue and to be received at any time subsequent to the execution of the instrument creating such disposition are governed by the rules prescribed in parts 3 and 4 in relation to future interests.

History: **En. Sec. 1160, Civ. C. 1895; re-en. Sec. 4467, Rev. C. 1907; re-en. Sec. 6709, R.C.M. 1921; Cal. Civ. C. Sec. 722; Field Civ. C. Sec. 204; re-en. Sec. 6709, R.C.M. 1935; R.C.M. 1947, 67-410.**

70-1-414. Accumulations of income — when void. All directions for the accumulation of the income of property, except such as are allowed by parts 3 and 4, are void.

History: **En. Sec. 1161, Civ. C. 1895; re-en. Sec. 4468, Rev. C. 1907; re-en. Sec. 6710, R.C.M. 1921; Cal. Civ. C. Sec. 723; Field Civ. C. Sec. 205; re-en. Sec. 6710, R.C.M. 1935; R.C.M. 1947, 67-411.**

70-1-415. Accumulations of income — period to be limited. An accumulation of the income of property may be directed by any will, trust, or transfer in writing sufficient to pass the property or create the trust out of which the fund is to arise for the benefit of one or more persons, objects, or purposes, to commence within the time permitted for the vesting of future interests and not to extend beyond the period limiting the time within which the absolute power of alienation of property may be suspended as prescribed by law.

History: **En. Sec. 1162, Civ. C. 1895; re-en. Sec. 4469, Rev. C. 1907; re-en. Sec. 6711, R.C.M. 1921; Cal. Civ. C. Sec. 724; Field Civ. C. Sec. 206; re-en. Sec. 6711, R.C.M. 1935; amd. Sec. 1, Ch. 212, L. 1939; R.C.M. 1947, 67-412.**

70-1-416. Direction for accumulation beyond period void in part. If the direction for an accumulation of the income of property is for a longer term than is limited in 70-1-415, the direction only, whether separable or not from the other provisions of the instrument, is void as respects the time beyond the limit prescribed in 70-1-415, and no other part of such instrument is affected by the void portion of such direction.

History: **En. Sec. 1163, Civ. C. 1895; re-en. Sec. 4470, Rev. C. 1907; re-en. Sec. 6712, R.C.M. 1921; Cal. Civ. C. Sec. 725; Field Civ. C. Sec. 207; re-en. Sec. 6712, R.C.M. 1935; amd. Sec. 1, Ch. 144, L. 1957; R.C.M. 1947, 67-413.**

70-1-417. Application of accumulated income to support. When one or more persons for whose benefit an accumulation of income has been directed is or are destitute of other sufficient means of support or education, the proper court upon application may direct a suitable sum to be applied thereto out of the fund directed to be accumulated for the benefit of such person or persons.

History: **En. Sec. 1164, Civ. C. 1895; re-en. Sec. 4471, Rev. C. 1907; re-en. Sec. 6713, R.C.M. 1921; Cal. Civ. C. Sec. 726; Field Civ. C. Sec. 208; re-en. Sec. 6713, R.C.M. 1935; amd. Sec. 2, Ch. 212, L. 1939; R.C.M. 1947, 67-414.**

70-1-418. Income accumulated during period of suspension — disposition. When, in consequence of a valid limitation of a future interest, there is a suspension of the power of alienation or of the ownership during the continuation of which the income is undisposed of and no valid direction for its accumulation is given, such income belongs to the person presumptively entitled to the next eventual interest.

History: **En. Sec. 1171, Civ. C. 1895; re-en. Sec. 4473, Rev. C. 1907; re-en. Sec. 6715, R.C.M. 1921; Cal. Civ. C. Sec. 733; Field Civ. C. Sec. 210; re-en. Sec. 6715, R.C.M. 1935; R.C.M. 1947, 67-416.**

70-1-419. Future interest not void for improbable contingency. A future interest is not void merely because of the improbability of the contingency on which it is limited to take effect.

History: **En. Sec. 1118, Civ. C. 1895; re-en. Sec. 4451, Rev. C. 1907; re-en. Sec. 6693, R.C.M. 1921; Cal. Civ. C. Sec. 697; Field Civ. C. Sec. 189; re-en. Sec. 6693, R.C.M. 1935; R.C.M. 1947, 67-323.**

70-1-420. Future interest limited to class — posthumous children. When a future interest is limited to successors, heirs, issue, or children, posthumous children are entitled to take in the same manner as if living at the death of their parent.

History: **En. Sec. 1119, Civ. C. 1895; re-en. Sec. 4452, Rev. C. 1907; re-en. Sec. 6694, R.C.M. 1921; Cal. Civ. C. Sec. 698; Field Civ. C. Sec. 190; re-en. Sec. 6694, R.C.M. 1935; R.C.M. 1947, 67-324.**

70-1-421. Future interest subject to defeat — how — not void. A future interest may be defeated in any manner or by any act or means which the party creating such interest provided for or authorized in the creation thereof, nor is the future interest, thus liable to be defeated, to be on that ground adjudged void in its creation.

History: **En. Sec. 1181, Civ. C. 1895; re-en. Sec. 4475, Rev. C. 1907; re-en. Sec. 6717, R.C.M. 1921; Cal. Civ. C. Sec. 740; Field Civ. C. Sec. 212; re-en. Sec. 6717, R.C.M. 1935; R.C.M. 1947, 67-418.**

70-1-422. Future interest contingent on death without children — how defeated. A future interest depending on the contingency of the death of any person without successors, heirs, issue, or children is defeated by the birth of a posthumous child of such person, capable of taking by succession.

History: En. Sec. 45, p. 486, Bannack Stat.; re-en. Sec. 45, p. 403, Cod. Stat. 1871; re-en. Sec. 222, 5th Div. Rev. Stat. 1879; re-en. Sec. 280, 5th Div. Comp. Stat. 1887; amd. Sec. 1180, Civ. C. 1895; re-en. Sec. 4474, Rev. C. 1907; re-en. Sec. 6716, R.C.M. 1921; Cal. Civ. C. Sec. 739; Field Civ. C. Sec. 211; re-en. Sec. 6716, R.C.M. 1935; R.C.M. 1947, 67-417.

70-1-423. Future interest not defeated by destruction of other interest. No future interest can be defeated or barred by any alienation or other act of the owner of the intermediate or precedent interest or by destruction of such precedent interest by forfeiture, surrender, merger, or otherwise, except as provided by 70-1-424 or where a forfeiture is imposed by statute as a penalty for the violation thereof.

History: En. Sec. 1182, Civ. C. 1895; re-en. Sec. 4476, Rev. C. 1907; re-en. Sec. 6718, R.C.M. 1921; Cal. Civ. C. Sec. 741; Field Civ. C. Sec. 213; re-en. Sec. 6718, R.C.M. 1935; R.C.M. 1947, 67-419.

70-1-424. Future contingent interest — termination of precedent interest. No future interest, valid in its creation, is defeated by the determination of the precedent interest before the happening of the contingency on which the future interest is limited to take effect, but should such contingency afterwards happen, the future interest takes effect in the same manner and to the same extent as if the precedent interest had continued to the same period.

History: En. Sec. 1183, Civ. C. 1895; re-en. Sec. 4477, Rev. C. 1907; re-en. Sec. 6719, R.C.M. 1921; Cal. Civ. C. Sec. 742; Field Civ. C. Sec. 214; re-en. Sec. 6719, R.C.M. 1935; R.C.M. 1947, 67-420.

Part 5

Transfer of Property
Grants and Their Interpretation

70-1-501. Transfer defined. Transfer is an act of the parties or of the law by which the title to property is conveyed from one living person to another.

History: En. Sec. 1430, Civ. C. 1895; re-en. Sec. 4588, Rev. C. 1907; re-en. Sec. 6835, R.C.M. 1921; Cal. Civ. C. Sec. 1039; Field Civ. C. Sec. 458; re-en. Sec. 6835, R.C.M. 1935; R.C.M. 1947, 67-1501.

70-1-502. Voluntary transfer — applicability of contract rules. A voluntary transfer is an executed contract subject to all rules of law concerning contracts in general, except that a consideration is not necessary to its validity.

History: En. Sec. 1431, Civ. C. 1895; re-en. Sec. 4589, Rev. C. 1907; re-en. Sec. 6836, R.C.M. 1921; Cal. Civ. C. Sec. 1040; Field Civ. C. Sec. 459; re-en. Sec. 6836, R.C.M. 1935; R.C.M. 1947, 67-1502.

70-1-503. What may be transferred. Property of any kind may be transferred, except as otherwise provided by this part.

History: En. Sec. 1440, Civ. C. 1895; re-en. Sec. 4590, Rev. C. 1907; re-en. Sec. 6837, R.C.M. 1921; Cal. Civ. C. Sec. 1044; Field Civ. C. Sec. 460; re-en. Sec. 6837, R.C.M. 1935; R.C.M. 1947, 67-1503.

70-1-504. Possibility not transferable. A mere possibility not coupled with an interest cannot be transferred.

History: En. Sec. 1441, Civ. C. 1895; re-en. Sec. 4591, Rev. C. 1907; re-en. Sec. 6838, R.C.M. 1921; Cal. Civ. C. Sec. 1045; Field Civ. C. Sec. 461; re-en. Sec. 6838, R.C.M. 1935; R.C.M. 1947, 67-1504.

70-1-505. Right of reentry or repossession transferable. A right of reentry or of repossession for breach of condition subsequent can be transferred.

History: En. Sec. 1442, Civ. C. 1895; re-en. Sec. 4592, Rev. C. 1907; re-en. Sec. 6839, R.C.M. 1921; Cal. Civ. C. Sec. 1046; Based on Field Civ. C. Sec. 462; re-en. Sec. 6839, R.C.M. 1935; R.C.M. 1947, 67-1505.

70-1-506. Oral transfer permitted. A transfer may be made without writing in every case in which a writing is not expressly required by statute.

History: En. Sec. 1450, Civ. C. 1895; re-en. Sec. 4594, Rev. C. 1907; re-en. Sec. 6841, R.C.M. 1921; Cal. Civ. C. Sec. 1052; Field Civ. C. Sec. 463; re-en. Sec. 6841, R.C.M. 1935; R.C.M. 1947, 67-1507.

70-1-507. Grant defined. A transfer in writing is called a grant or conveyance or bill of sale. The term "grant", in this part, includes all these instruments unless it is specially applied to real property.

History: En. Sec. 1451, Civ. C. 1895; re-en. Sec. 4595, Rev. C. 1907; re-en. Sec. 6842, R.C.M. 1921; Cal. Civ. C. Sec. 1053; re-en. Sec. 6842, R.C.M. 1935; R.C.M. 1947, 67-1508.

70-1-508. Delivery of grant necessary. A grant takes effect so as to vest the interest intended to be transferred only upon its delivery by the grantor.

History: En. Sec. 1452, Civ. C. 1895; re-en. Sec. 4596, Rev. C. 1907; re-en. Sec. 6843, R.C.M. 1921; Cal. Civ. C. Sec. 1054; Field Civ. C. Sec. 465; re-en. Sec. 6843, R.C.M. 1935; R.C.M. 1947, 67-1509.

70-1-509. Presumption of delivery. A grant duly executed is presumed to have been delivered at its date.

History: En. Sec. 1453, Civ. C. 1895; re-en. Sec. 4597, Rev. C. 1907; re-en. Sec. 6844, R.C.M. 1921; Cal. Civ. C. Sec. 1055; Field Civ. C. Sec. 466; re-en. Sec. 6844, R.C.M. 1935; R.C.M. 1947, 67-1510.

70-1-510. Delivery to grantee necessarily absolute. A grant cannot be delivered to the grantee conditionally. Delivery to him or to his agent as such is necessarily absolute, and the instrument takes effect thereupon, discharged of any condition on which the delivery is made.

History: En. Sec. 1454, Civ. C. 1895; re-en. Sec. 4598, Rev. C. 1907; re-en. Sec. 6845, R.C.M. 1921; Cal. Civ. C. Sec. 1056; Field Civ. C. Sec. 467; re-en. Sec. 6845, R.C.M. 1935; R.C.M. 1947, 67-1511.

70-1-511. Delivery in escrow. A grant may be deposited by the grantor with a third person, to be delivered on performance of a condition, and on delivery by the depositary, it will take effect. While in the possession of the third person and subject to condition, it is called an escrow.

History: En. Sec. 1455, Civ. C. 1895; re-en. Sec. 4599, Rev. C. 1907; re-en. Sec. 6846, R.C.M. 1921; Cal. Civ. C. Sec. 1057; Based on Field Civ. C. Sec. 468; re-en. Sec. 6846, R.C.M. 1935; R.C.M. 1947, 67-1512.

70-1-512. Constructive delivery. Though a grant be not actually delivered into the possession of the grantee, it is yet to be deemed constructively delivered in the following cases:

(1) where the instrument is, by the agreement of the parties at the time of execution, understood to be delivered and under such circumstances that the grantee is entitled to immediate delivery; or

(2) where it is delivered to a stranger for the benefit of the grantee, and his assent is shown or may be presumed.

History: En. Sec. 1457, Civ. C. 1895; re-en. Sec. 4601, Rev. C. 1907; re-en. Sec. 6848, R.C.M. 1921; Cal. Civ. C. Sec. 1059; Field Civ. C. Sec. 470; re-en. Sec. 6848, R.C.M. 1935; R.C.M. 1947, 67-1514.

70-1-513. Grants — how interpreted generally. Grants are to be interpreted in like manner with contracts in general, except so far as is otherwise provided in this part.

History: En. Sec. 1470, Civ. C. 1895; re-en. Sec. 4602, Rev. C. 1907; re-en. Sec. 6849, R.C.M. 1921; Cal. Civ. C. Sec. 1066; Field Civ. C. Sec. 472; re-en. Sec. 6849, R.C.M. 1935; R.C.M. 1947, 67-1515.

70-1-514. Clear limitation not controlled by other words. A clear and distinct limitation in a grant is not controlled by other words less clear and distinct.

History: En. Sec. 1471, Civ. C. 1895; re-en. Sec. 4603, Rev. C. 1907; re-en. Sec. 6850, R.C.M. 1921; Cal. Civ. C. Sec. 1067; Field Civ. C. Sec. 473; re-en. Sec. 6850, R.C.M. 1935; R.C.M. 1947, 67-1516.

70-1-515. Recitals — when resorted to. If the operative words of a grant are doubtful, recourse may be had to its recitals to assist the construction.

History: En. Sec. 1472, Civ. C. 1895; re-en. Sec. 4604, Rev. C. 1907; re-en. Sec. 6851, R.C.M. 1921; Cal. Civ. C. Sec. 1068; Field Civ. C. Sec. 474; re-en. Sec. 6851, R.C.M. 1935; R.C.M. 1947, 67-1517.

70-1-516. Interpretation against grantor — exception. A grant is to be interpreted in favor of the grantee, except that a reservation in any grant and every grant by a public officer or body, as such, to a private party is to be interpreted in favor of the grantor.

History: En. Sec. 1473, Civ. C. 1895; re-en. Sec. 4605, Rev. C. 1907; re-en. Sec. 6852, R.C.M. 1921; Cal. Civ. C. Sec. 1069; Field Civ. C. Sec. 475; re-en. Sec. 6852, R.C.M. 1935; R.C.M. 1947, 67-1518.

70-1-517. Irreconcilable provisions. If several parts of a grant are absolutely irreconcilable, the former part prevails.

History: En. Sec. 1474, Civ. C. 1895; re-en. Sec. 4606, Rev. C. 1907; re-en. Sec. 6853, R.C.M. 1921; Cal. Civ. C. Sec. 1070; Field Civ. C. Sec. 476; re-en. Sec. 6853, R.C.M. 1935; R.C.M. 1947, 67-1519.

70-1-518. Meaning of heirs and issue in certain remainders. Where a future interest is limited by a grant to take effect on the death of any person without heirs or heirs of his body or without issue or in equivalent words, such words must be taken to mean successors or issue living at the death of the person named as ancestor.

History: En. Sec. 44, p. 486, Bannack Stat.; re-en. Sec. 44, p. 403, Cod. Stat. 1871; re-en. Sec. 221, 5th Div. Rev. Stat. 1879; re-en. Sec. 279, 5th Div. Comp. Stat. 1887; amd. Sec. 1475, Civ. C.

1895; re-en. Sec. 4607, Rev. C. 1907; re-en. Sec. 6854, R.C.M. 1921; Cal. Civ. C. Sec. 1071; Field Civ. C. Sec. 477; re-en. Sec. 6854, R.C.M. 1935; R.C.M. 1947, 67-1520.

70-1-519. Transfer vests title. A transfer vests in the transferee all the actual title to the thing transferred which the transferor then has unless a different intention is expressed or is necessarily implied.

History: En. Sec. 1490, Civ. C. 1895; re-en. Sec. 4609, Rev. C. 1907; re-en. Sec. 6856, R.C.M. 1921; Cal. Civ. C. Sec. 1083; Based on Field Civ. C. Sec. 479; re-en. Sec. 6856, R.C.M. 1935; R.C.M. 1947, 67-1522.

70-1-520. Transfer of incidents. The transfer of a thing transfers also all its incidents unless expressly excepted, but the transfer of an incident to a thing does not transfer the thing itself.

History: En. Sec. 1491, Civ. C. 1895; re-en. Sec. 4610, Rev. C. 1907; re-en. Sec. 6857, R.C.M. 1921; Cal. Civ. C. Sec. 1084; Field Civ. C. Sec. 481; re-en. Sec. 6857, R.C.M. 1935; R.C.M. 1947, 67-1523.

70-1-521. Grant may inure to benefit of stranger. A present interest and the benefit of a condition or covenant respecting property may be taken by any natural person under a grant although not named a party thereto.

History: En. Sec. 1492, Civ. C. 1895; re-en. Sec. 4611, Rev. C. 1907; re-en. Sec. 6858, R.C.M. 1921; Cal. Civ. C. Sec. 1805; Field Civ. C. Sec. 482; re-en. Sec. 6858, R.C.M. 1935; R.C.M. 1947, 67-1524.

Part 6

Rentals — Hiring

70-1-601. Hiring defined. Hiring is a contract by which one gives to another the temporary possession and use of property, other than money, for reward, and the latter agrees to return the same to the former at a future time.

History: En. Sec. 2600, Civ. C. 1895; re-en. Sec. 5215, Rev. C. 1907; re-en. Sec. 7730, R.C.M. 1921; Cal. Civ. C. Sec. 1925; Field Civ. C. Sec. 979; re-en. Sec. 7730, R.C.M. 1935; R.C.M. 1947, 42-101.

70-1-602. Quiet possession — letter obliged to secure. An agreement to let upon hire binds the letter to secure to the hirer the quiet possession of the thing hired, during the term of the hiring, against all persons lawfully claiming the same.

History: En. Sec. 2602, Civ. C. 1895; re-en. Sec. 5217, Rev. C. 1907; re-en. Sec. 7732, R.C.M. 1921; Cal. Civ. C. Sec. 1927; Field Civ. C. Sec. 981; re-en. Sec. 7732, R.C.M. 1935; R.C.M. 1947, 42-103.

70-1-603. Products of thing hired. The products of a thing hired, during the hiring, belong to the hirer.

History: En. Sec. 2601, Civ. C. 1895; re-en. Sec. 5216, Rev. C. 1907; re-en. Sec. 7731, R.C.M. 1921; Cal. Civ. C. Sec. 1926; Field Civ. C. Sec. 980; re-en. Sec. 7731, R.C.M. 1935; R.C.M. 1947, 42-102.

70-1-604. Standard of care required of hirer. The hirer of a thing must use ordinary care for its preservation in safety and in good condition.

History: En. Sec. 2603, Civ. C. 1895; re-en. Sec. 5218, Rev. C. 1907; re-en. Sec. 7733, R.C.M. 1921; Cal. Civ. C. Sec. 1928; Field Civ. C. Sec. 982; re-en. Sec. 7733, R.C.M. 1935; R.C.M. 1947, 42-104.

70-1-605. Hirer's duty to repair. The hirer of a thing must repair all deteriorations or injuries thereto occasioned by his ordinary negligence.

History: En. Sec. 2604, Civ. C. 1895; re-en. Sec. 5219, Rev. C. 1907; re-en. Sec. 7734, R.C.M. 1921; Cal. Civ. C. Sec. 1929; Field Civ. C. Sec. 983; re-en. Sec. 7734, R.C.M. 1935; R.C.M. 1947, 42-105.

70-1-606. Thing let for particular purpose. When a thing is let for a particular purpose, the hirer must not use it for any other purpose, and if he does, the letter may hold him responsible for its safety during such use in all events or may treat the contract as thereby rescinded.

History: En. Sec. 2605, Civ. C. 1895; re-en. Sec. 5220, Rev. C. 1907; re-en. Sec. 7735, R.C.M. 1921; Cal. Civ. C. Sec. 1930; Field Civ. C. Sec. 984; re-en. Sec. 7735, R.C.M. 1935; R.C.M. 1947, 42-106.

70-1-607. When hiring terminates. The hiring of a thing terminates:

(1) at the end of the term agreed upon;

(2) by the mutual consent of the parties;

(3) by the hirer acquiring a title to the thing hired superior to that of the letter; or

(4) by the destruction of the thing hired.

History: En. Sec. 2608, Civ. C. 1895; re-en. Sec. 5223, Rev. C. 1907; re-en. Sec. 7738, R.C.M. 1921; Cal. Civ. C. Sec. 1933; Field Civ. C. Sec. 987; re-en. Sec. 7738, R.C.M. 1935; R.C.M. 1947, 42-109.

70-1-608. Termination by death or incapacity. If the hiring of a thing is terminable at the pleasure of one of the parties, it is terminated by notice to the other of his death or incapacity to contract. In other cases it is not terminated thereby.

History: En. Sec. 2609, Civ. C. 1895; re-en. Sec. 5224, Rev. C. 1907; re-en. Sec. 7739, R.C.M. 1921; Cal. Civ. C. Sec. 1934; Field Civ. C. Sec. 988; re-en. Sec. 7739, R.C.M. 1935; R.C.M. 1947, 42-110.

70-1-609. When letter may terminate hiring. The letter of a thing may terminate the hiring and reclaim the thing before the end of the term agreed upon when the hirer:

(1) uses or permits a use of the thing hired in a manner contrary to the agreement of the parties; or

(2) does not, within a reasonable time after request, make such repairs as he is bound to make.

History: En. Sec. 2606, Civ. C. 1895; re-en. Sec. 5221, Rev. C. 1907; re-en. Sec. 7736, R.C.M. 1921; Cal. Civ. C. Sec. 1931; Field Civ. C. Sec. 985; re-en. Sec. 7736, R.C.M. 1935; R.C.M. 1947, 42-107.

70-1-610. When hirer may terminate hiring. The hirer of a thing may terminate the hiring before the end of the term agreed upon when:

(1) the letter does not, within a reasonable time after request, fulfill his obligations, if any, as to placing and securing the hirer in the quiet possession of the thing hired or putting it into good condition or repairing; or

(2) the greater part of the thing hired or that part which was and which the letter had at the time of the hiring reason to believe was the material

inducement to the hirer to enter into the contract perishes from any other cause than the ordinary negligence of the hirer.

History: **En. Sec. 2607, Civ. C. 1895; re-en. Sec. 5222, Rev. C. 1907; re-en. Sec. 7737, R.C.M. 1921; Cal. Civ. C. Sec. 1932; Field Civ. C. Sec. 986; re-en. Sec. 7737, R.C.M. 1935; R.C.M. 1947, 42-108.**

70-1-611. Apportionment of rent upon termination. When the hiring of a thing is terminated before the time originally agreed upon, the hirer must pay the due proportion of the hire for such use as he has actually made of the thing unless such use is merely nominal and of no benefit to him.

History: **En. Sec. 2610, Civ. C. 1895; re-en. Sec. 5225, Rev. C. 1907; re-en. Sec. 7740, R.C.M. 1921; Cal. Civ. C. Sec. 1935; Field Civ. C. Sec. 989; re-en. Sec. 7740, R.C.M. 1935; R.C.M. 1947, 42-111.**

Part 7

Gifts and Devises to Estates

70-1-701. Purpose. It is the purpose of this part to declare that a gift or devise may be made to the estate of a named or otherwise designated person and that a power to appoint to the estate of such a person may be created and exercised in order to ensure that persons who make inter vivos or testamentary conveyances that are subject to the law of Montana can effectively use forms of conveyances that are commonly used in other states to qualify for the federal estate and gift tax marital deductions.

History: **En. Sec. 1, Ch. 376, L. 1979.**

70-1-702. Estate defined. The word "estate" as used in this part means persons who may take interests in property.

History: **En. Sec. 4, Ch. 376, L. 1979.**

70-1-703. Conveyances to an estate. Unless a contrary intention appears, a devise, as defined in 72-1-103(8), or an inter vivos conveyance of a property interest to the estate of a named or otherwise designated person passes the interest as if the interest had been owned by that person. The interest may pass to the heirs of that person, may be used to satisfy devises made in his will, or may be used to satisfy claims for debts or taxes.

History: **En. Sec. 2, Ch. 376, L. 1979.**

70-1-704. Creation or exercise of a power to appoint to an estate. A person may be given a power to appoint a legal or equitable interest in property to his own estate by will or deed. The donee of such a power is considered to have a general power of appointment exercisable in favor of any person. Permissible exercise of the power as created may include but is not limited to:

(1) direction to the personal representative of the donee to administer the interest as if it were an interest in the property of the donee;

(2) direction to the personal representative to use the interest to satisfy the donee's devises or claims for debts and taxes; or

(3) appointment of the interest to any person to whom the donee might give or devise his own property.

History: **En. Sec. 3, Ch. 376, L. 1979.**

CHAPTER 2

PERSONAL PROPERTY — SPECIAL KINDS QUIET TITLE AND PARTITION

Part 1 — Special Kinds

Section
70-2-101. Thing in action defined.
70-2-102. Transfer and succession.
Sections 70-2-103 through 70-2-110 reserved.
70-2-111. Wild animals.
70-2-112. Property rights in fur-bearing animals.
70-2-113. Fur-bearing animals — recording of brands — fees.

Part 2 — Quiet Title and Partition

70-2-201. Action for quieting title to personal property.
70-2-202. General procedural provisions applicable.
Sections 70-2-203 through 70-2-210 reserved.
70-2-211. Partition of personal property.
70-2-212. Real property partition provisions applicable.

Part 1

Special Kinds

70-2-101. Thing in action defined. A thing in action is a right to recover money or other personal property by a judicial proceeding.

History: En. Sec. 1350, Civ. C. 1895; re-en. Sec. 4557, Rev. C. 1907; re-en. Sec. 6804, R.C.M. 1921; Cal. Civ. C. Sec. 953; Based on Field Civ. C. Sec. 366; re-en. Sec. 6804, R.C.M. 1935; R.C.M. 1947, 67-1102.

70-2-102. Transfer and succession. A thing in action arising out of the violation of a right of property or out of an obligation may be transferred by the owner. Upon the death of the owner, it passes to his personal representatives except where in the cases provided in this code it passes to his devisees or successor in office.

History: En. Sec. 1351, Civ. C. 1895; re-en. Sec. 4558, Rev. C. 1907; re-en. Sec. 6805, R.C.M. 1921; Cal. Civ. C. Sec. 954; Field Civ. C. Sec. 367; re-en. Sec. 6805, R.C.M. 1935; R.C.M. 1947, 67-1103.

70-2-103 through 70-2-110 reserved.

70-2-111. Wild animals. Animals wild by nature are the subjects of ownership, while living, only when on the land of the person claiming them or when tamed or taken or held in the possession or disabled and immediately pursued.

History: En. Sec. 1072, Civ. C. 1895; re-en. Sec. 4423, Rev. C. 1907; re-en. Sec. 6665, R.C.M. 1921; Cal. Civ. C. Sec. 656; Field Civ. C. Sec. 161; re-en. Sec. 6665, R.C.M. 1935; R.C.M. 1947, 67-203.

Cross-References

Prohibition of possession of wild animals, 50-23-102.

70-2-112. Property rights in fur-bearing animals. Fur-bearing animals, which of their nature, in the absence of efforts for their domestication, are known as wild, whenever the same shall have been brought into or born in restraint or captivity, whether in or upon reserves, preserves, parks, ranches, or other premises of lands or waters possessed or operated in whole or part for the preservation, culture, breeding, or growing of such animals in a state of whole or partial domestication and wherein or whereon routine attention is given to such preservation, culture, breeding, or growing of such animals, are and shall be, together with their offspring and increase, the subjects of ownership, lien, and all kinds of absolute and other property rights (the same as purely domestic animals) in whatever situation, location, or condition such animals may thereafter come or be and regardless of their remaining in or escaping from such restraint or captivity. However, such escaped animals must bear a registered brand or tattoo, pursuant to 70-2-113, to be subject to private ownership.

History: **En. Sec. 1, Ch. 97, L. 1933; re-en. Sec. 6665.1, R.C.M. 1935; R.C.M. 1947, 67-204.**

Cross-References

Prohibition of possession of wild animals, 50-23-102.

70-2-113. Fur-bearing animals — recording of brands — fees. (1) An owner or prospective owner of animals described in 70-2-112 is entitled by written subscribed statement to adopt distinctive brands or tattoo marks, not including arabic numerals and not already in known use by others, for any of the animals and to have the distinctive brands and tattoo marks recorded in his name with the department of livestock on paying a recording fee equal to that charged for recording marks or brands used on domestic animals and livestock set by 81-3-107 for each brand and for each tattoo mark. The statements shall be recorded in a suitable book to be kept for that purpose by the department of livestock. The presence of the recorded brand or recorded tattoo marks on an animal is prima facie evidence of the ownership of the animal in the person, association, or corporation in whose name the brand or tattoo mark is recorded, subject always to the right to make a transfer of title, right, or interest in or lien on the animal.

(2) A person desiring to transfer a brand or mark properly recorded by him under this section may do so provided he meets the requirements and pays the fees imposed by Title 81, chapter 3, part 1. Brands or marks recorded under this section are subject to the same rerecording requirements and fees as imposed by Title 81, chapter 3, part 1.

(3) All fees collected under this section shall be paid into the earmarked revenue fund for the use of the department.

History: **En. Sec. 2, Ch. 97, L. 1933; re-en. Sec. 6665.2, R.C.M. 1935; amd. Sec. 196, Ch. 310, L. 1974; amd. Sec. 2, Ch. 10, L. 1977; R.C.M. 1947, 67-205.**

Cross-References

Prohibition of possession of wild animals, 50-23-102.

Part 2

Quiet Title and Partition

70-2-201. Action for quieting title to personal property. Any person claiming title to personal property, whether in actual possession thereof or not, may bring an action in the district court of any county wherein such personal property or any part thereof is situated against any person or persons claiming any interest therein by reason of alleged ownership, lien, or otherwise and by a decree of such court may have established and determined finally the rights of all claimants to such personal property.

History: **En. Sec. 1, Ch. 51, L. 1935; re-en. Sec. 9478.1, R.C.M. 1935; R.C.M. 1947, 93-6201.**

70-2-202. General procedural provisions applicable. The provisions of Title 25, chapter 3, parts 2 and 3, and Rules 4, 12(a), and 41(e), M.R.Civ.P., are applicable to the action for which provision is made in 70-2-201.

History: **En. Sec. 2, Ch. 51, L. 1935; re-en. Sec. 9478.2, R.C.M. 1935; R.C.M. 1947, 93-6202; amd. Sec. 1, Ch. 115, L. 1979.**

70-2-203 through 70-2-210 reserved.

70-2-211. Partition of personal property. (1) When any personal property is owned by two or more persons, any one or more thereof may bring an action, according to the respective rights of the persons interested therein, for the partition of such property or for a sale of the same or any part thereof if it appears that a partition cannot be made without great prejudice to the owners.

(2) Such action shall be brought in the county wherein said property or any part thereof is situated.

History: **En. Sec. 1, Ch. 143, L. 1959; R.C.M. 1947, 93-6301.1.**

70-2-212. Real property partition provisions applicable. The provisions contained in chapter 29 of this title, which prescribe the manner in which real property may be sold, are hereby made applicable to the action which is authorized by 70-2-211.

History: **En. Sec. 2, Ch. 143, L. 1959; R.C.M. 1947, 93-6301.2.**

CHAPTER 3

TRANSFER OF PERSONAL PROPERTY — GIFTS

Part 1 — General Provisions

Section
70-3-101. Gift defined.
70-3-102. Gift — how made.
70-3-103. Gift not revocable.
70-3-104. Unsolicited goods considered gift.

Part 2 — Gifts in View of Death

70-3-201. Gift in view of death defined.
70-3-202. When gift presumed to be in view of death.
70-3-203. Revocation.
70-3-204. Effect of will upon gift.
70-3-205. When gift treated as legacy.

Part 1

General Provisions

70-3-101. Gift defined. A gift is a transfer of personal property made voluntarily and without consideration.

History: En. Sec. 1550, Civ. C. 1895; re-en. Sec. 4635, Rev. C. 1907; re-en. Sec. 6882, R.C.M. 1921; Cal. Civ. C. Sec. 1146; Field Civ. C. Sec. 500; re-en. Sec. 6882, R.C.M. 1935; R.C.M. 1947, 67-1706.

70-3-102. Gift — how made. A verbal gift is not valid unless the means of obtaining possession and control of the thing are given or, if it is capable of delivery, unless there is an actual or symbolical delivery of the thing to the donee.

History: En. Sec. 1551, Civ. C. 1895; re-en. Sec. 4636, Rev. C. 1907; re-en. Sec. 6883, R.C.M. 1921; Cal. Civ. C. Sec. 1147; Field Civ. C. Sec. 501; re-en. Sec. 6883, R.C.M. 1935; R.C.M. 1947, 67-1707.

70-3-103. Gift not revocable. A gift, other than a gift in view of death, cannot be revoked by the giver.

History: En. Sec. 1552, Civ. C. 1895; re-en. Sec. 4637, Rev. C. 1907; re-en. Sec. 6884, R.C.M. 1921; Cal. Civ. C. Sec. 1148; Field Civ. C. Sec. 502; re-en. Sec. 6884, R.C.M. 1935; R.C.M. 1947, 67-1708.

70-3-104. Unsolicited goods considered gift. Unless otherwise agreed, where unsolicited goods are delivered to a person, he may refuse delivery of the goods, or if the goods are delivered, the person is not bound to return the goods to the sender. If unsolicited goods are either addressed to or intended for the recipient, they shall be deemed a gift, and the recipient may use or dispose of them in any manner without obligation to the sender.

History: En. Sec. 1, Ch. 210, L. 1967; R.C.M. 1947, 67-1706.1.

Part 2

Gifts in View of Death

70-3-201. Gift in view of death defined. A gift in view of death is one which is made in contemplation, fear, or peril of death and with intent that it shall take effect only in case of the death of the giver.

History: En. Sec. 1553, Civ. C. 1895; re-en. Sec. 4638, Rev. C. 1907; re-en. Sec. 6885, R.C.M. 1921; Cal. Civ. C. Sec. 1149; Field Civ. C. Sec. 503; re-en. Sec. 6885, R.C.M. 1935; R.C.M. 1947, 67-1709.

70-3-202. When gift presumed to be in view of death. A gift made during the last illness of the giver or under circumstances which would impress him with an expectation of speedy death is presumed to be a gift in view of death.

History: En. Sec. 1554, Civ. C. 1895; re-en. Sec. 4639, Rev. C. 1907; re-en. Sec. 6886, R.C.M. 1921; Cal. Civ. C. Sec. 1150; Field Civ. C. Sec. 504; re-en. Sec. 6886, R.C.M. 1935; R.C.M. 1947, 67-1710.

70-3-203. Revocation. A gift in view of death may be revoked by the giver at any time and is revoked by his recovery from the illness or escape from the peril under the presence of which it was made or by the occurrence of any event which would operate as a revocation of a will made at the same time.

History: En. Sec. 1555, Civ. C. 1895; re-en. Sec. 4640, Rev. C. 1907; re-en. Sec. 6887, R.C.M. 1921; Cal. Civ. C. Sec. 1151; Field Civ. C. Sec. 505; re-en. Sec. 6887, R.C.M. 1935; R.C.M. 1947, 67-1711.

70-3-204. Effect of will upon gift. A gift in view of death is not affected by a previous will or by a subsequent will unless it expresses intention to revoke the gift.

History: En. Sec. 1556, Civ. C. 1895; re-en. Sec. 4641, Rev. C. 1907; re-en. Sec. 6888, R.C.M. 1921; Cal. Civ. C. Sec. 1152; Field Civ. C. Sec. 506; re-en. Sec. 6888, R.C.M. 1935; R.C.M. 1947, 67-1712.

70-3-205. When gift treated as legacy. A gift in view of death must be treated as a legacy so far as relates to the creditors of the giver.

History: En. Sec. 1557, Civ. C. 1895; re-en. Sec. 4642, Rev. C. 1907; re-en. Sec. 6889, R.C.M. 1921; Cal. Civ. C. Sec. 1153; Field Civ. C. Sec. 507; re-en. Sec. 6889, R.C.M. 1935; R.C.M. 1947, 67-1713.

CHAPTER 4

ACCESSION AND INTERMIXTURE PERSONAL PROPERTY

Part 1 — General Provisions

Section
70-4-101. Uniform Commercial Code — applicability.
70-4-102. Uniting several things — to whom whole belongs.
70-4-103. Rules for determination of principal part.

Part 2 — Uniting of Materials—Workmanship

70-4-201. Use of materials belonging to another — reimbursement.
70-4-202. Uniting of materials of maker and other.
70-4-203. Uniting of materials of several owners.
70-4-204. Use of materials without consent — owner prevails.
70-4-205. Owner of materials wrongfully used — election of remedies.
70-4-206. Wrongdoer liable in damages.

Part 1

General Provisions

70-4-101. Uniform Commercial Code — applicability. The provisions of this chapter apply only to the extent not otherwise provided for in the Uniform Commercial Code.

History: En. 67-1410 by Sec. 11-147, Ch. 264, L. 1963; R.C.M. 1947, 67-1410.

70-4-102. Uniting several things — to whom whole belongs. When things belonging to different owners have been united so as to form a single thing and cannot be separated without injury, the whole belongs to the owner of the thing which forms the principal part, who must, however, reimburse the value of the residue to the other owner or surrender the whole to him.

History: En. Sec. 1410, Civ. C. 1895; re-en. Sec. 4579, Rev. C. 1907; re-en. Sec. 6826, R.C.M. 1921; Cal. Civ. C. Sec. 1025; Field Civ. C. Sec. 449; re-en. Sec. 6826, R.C.M. 1935; R.C.M. 1947, 67-1401.

70-4-103. Rules for determination of principal part. (1) That part is deemed to be the principal to which the other has been united only for the use, ornament, or completion of the former unless the latter is the more valuable and has been united without the knowledge of its owner, who may, in the latter case, require it to be separated and returned to him although some injury should result to the thing to which it has been united.

(2) If neither part can be considered the principal within the rule prescribed by subsection (1), the more valuable or, if the values are nearly equal, the most considerable in bulk is to be deemed the principal part.

History: En. Secs. 1411, 1412, Civ. C. 1895; re-en. Secs. 4580, 4581, Rev. C. 1907; re-en. Secs. 6827, 6828, R.C.M. 1921; Cal. Civ. C. Secs. 1026, 1027; Field Civ. C. Secs. 450, 451; re-en. Secs. 6827, 6828, R.C.M. 1935; R.C.M. 1947, 67-1402, 67-1403.

Part 2

Uniting of Materials — Workmanship

70-4-201. Use of materials belonging to another — reimbursement. If one makes a thing from materials belonging to another, the latter may claim the thing on reimbursing the value of the workmanship unless the value of the workmanship exceeds the value of the materials, in which case the thing belongs to the maker on reimbursing the value of the materials.

History: En. Sec. 1413, Civ. C. 1895; re-en. Sec. 4582, Rev. C. 1907; re-en. Sec. 6829, R.C.M. 1921; Cal. Civ. C. Sec. 1028; Field Civ. C. Sec. 452; re-en. Sec. 6829, R.C.M. 1935; R.C.M. 1947, 67-1404.

70-4-202. Uniting of materials of maker and other. Where one has made use of materials which in part belong to him and in part to another in order to form a thing of a new description, without having destroyed any of the materials but in such a way that they cannot be separated without inconvenience, the thing formed is common to both proprietors in proportion, as respects the one, of the materials belonging to him and, as respects the other, of the materials belonging to him and the price of his workmanship.

History: En. Sec. 1414, Civ. C. 1895; re-en. Sec. 4583, Rev. C. 1907; re-en. Sec. 6830, R.C.M. 1921; Cal. Civ. C. Sec. 1029; Field Civ. C. Sec. 453; re-en. Sec. 6830, R.C.M. 1935; R.C.M. 1947, 67-1405.

70-4-203. Uniting of materials of several owners. When a thing has been formed by the admixture of several materials of different owners and neither can be considered the principal substance, an owner without whose consent the admixture was made may require a separation if the materials can be separated without inconvenience. If they cannot be thus separated, the owners acquire the thing in common, in proportion to the quantity, quality, and value of their materials, but if the materials of one were far superior to those of the others, both in quantity and value, he may claim the thing on reimbursing to the others the value of their materials.

History: **En. Sec. 1415, Civ. C. 1895; re-en. Sec. 4584, Rev. C. 1907; re-en. Sec. 6831, R.C.M. 1921; Cal. Civ. C. Sec. 1030; Field Civ. C. Sec. 454; re-en. Sec. 6831, R.C.M. 1935; R.C.M. 1947, 67-1406.**

70-4-204. Use of materials without consent — owner prevails. The foregoing sections of this chapter are not applicable to cases in which one willfully uses the materials of another without his consent, but in such cases, the product belongs to the owner of material if its identity can be traced.

History: **En. Sec. 1416, Civ. C. 1895; re-en. Sec. 4585, Rev. C. 1907; re-en. Sec. 6832, R.C.M. 1921; Cal. Civ. C. Sec. 1031; Field Civ. C. Sec. 455; re-en. Sec. 6832, R.C.M. 1935; R.C.M. 1947, 67-1407.**

70-4-205. Owner of materials wrongfully used — election of remedies. In all cases where one whose material has been used without his knowledge in order to form a product of a different description can claim an interest in such product, he has an option to demand either restitution of his material in kind, in the same quantity, weight, measure, and quality, or the value thereof or, where he is entitled to the product, the value thereof in place of the product.

History: **En. Sec. 1417, Civ. C. 1895; re-en. Sec. 4586, Rev. C. 1907; re-en. Sec. 6833, R.C.M. 1921; Cal. Civ. C. Sec. 1032; Field Civ. C. Sec. 456; re-en. Sec. 6833, R.C.M. 1935; R.C.M. 1947, 67-1408.**

70-4-206. Wrongdoer liable in damages. One who wrongfully employs materials belonging to another is liable to him in damages as well as under the foregoing provisions of this chapter.

History: **En. Sec. 1418, Civ. C. 1895; re-en. Sec. 4587, Rev. C. 1907; re-en. Sec. 6834, R.C.M. 1921; Cal. Civ. C. Sec. 1033; Field Civ. C. Sec. 457; re-en. Sec. 6834, R.C.M. 1935; R.C.M. 1947, 67-1409.**

CHAPTER 5

FINDERS

Part 1 — Rights and Duties of Finders Generally

Section

70-5-101. Nonapplicability to things abandoned.
70-5-102. Finder not bound to take charge — status as depositary.
70-5-103. Duty to inform owner when known.
70-5-104. Right of finder to require proof of claimant's ownership.
70-5-105. Compensation of finder.
70-5-106. Exoneration of finder by storage of thing found.
70-5-107. Exoneration of owner by surrender of thing to finder.

Part 2 — Procedure

70-5-201. When finder may sell thing found.
70-5-202. How sale conducted.
70-5-203. Finder to make affidavit when owner not known.
70-5-204. Justice to appoint appraisers — duty of appraisers.

70-5-205. Recording and posting of valuation and description.
70-5-206. When property vests in finder — publication.
70-5-207. When finder to restore property.
70-5-208. Proof — how made.
70-5-209. Finder failing to make discovery — double recovery.

Part 1

Rights and Duties of Finders Generally

70-5-101. Nonapplicability to things abandoned. The provisions of this chapter have no application to things which have been intentionally abandoned by their owners.

History: En. Sec. 2528, Civ. C. 1895; re-en. Sec. 5186, Rev. C. 1907; re-en. Sec. 7693, R.C.M. 1921; Cal. Civ. C. Sec. 1872; Field Civ. C. Sec. 946; re-en. Sec. 7693, R.C.M. 1935; R.C.M. 1947, 20-409.

70-5-102. Finder not bound to take charge — status as depositary. One who finds a thing lost is not bound to take charge of it, but if he does so, he is thenceforth a depositary for the owner, with the rights and obligations of a depositary for hire.

History: En. Sec. 2520, Civ. C. 1895; re-en. Sec. 5178, Rev. C. 1907; re-en. Sec. 7685, R.C.M. 1921; Cal. Civ. C. Sec. 1864; Field Civ. C. Sec. 938; re-en. Sec. 7685, R.C.M. 1935; R.C.M. 1947, 20-401.

70-5-103. Duty to inform owner when known. If any person finds any money, goods, things in action, or other personal property or saves any domestic animal from drowning or starvation when the property is of a value of $10 or more and he knows or suspects who the owner is, he must use reasonable diligence to inform the owner thereof and make restitution without compensation, further than a reasonable charge for saving and taking care thereof. If he fails to do so, he is liable in damages to the owner and has no claim to any reward offered by the owner for the recovery of the thing or to any compensation for his trouble or expenses.

History: En. Sec. 2900, Pol. C. 1895; re-en. Sec. 1996, Rev. C. 1907; re-en. Sec. 7694, R.C.M. 1921; Cal. Pol. C. Sec. 3136; re-en. Sec. 7694, R.C.M. 1935; R.C.M. 1947, 20-410(part); amd. Sec. 2, Ch. 115, L. 1979.

70-5-104. Right of finder to require proof of claimant's ownership. The finder of a thing may in good faith before giving it up require reasonable proof of ownership from any person claiming it.

History: En. Sec. 2522, Civ. C. 1895; re-en. Sec. 5180, Rev. C. 1907; re-en. Sec. 7687, R.C.M. 1921; Cal. Civ. C. Sec. 1866; Field Civ. C. Sec. 940; re-en. Sec. 7687, R.C.M. 1935; R.C.M. 1947, 20-403.

70-5-105. Compensation of finder. The finder of a thing is entitled to compensation for all expenses necessarily incurred by him in its preservation and for any other service necessarily performed by him about it and to a reasonable reward for keeping it.

History: En. Sec. 2523, Civ. C. 1895; re-en. Sec. 5181, Rev. C. 1907; re-en. Sec. 7688, R.C.M. 1921; Cal. Civ. Sec. 1867; Field. Civ. C. Sec. 941; re-en. Sec. 7688, R.C.M. 1935; R.C.M. 1947, 20-404.

70-5-106. Exoneration of finder by storage of thing found. The finder of a thing may exonerate himself from liability at any time by placing it on storage with any responsible person of good character at a reasonable expense.

History: En. Sec. 2524, Civ. C. 1895; re-en. Sec. 5182, Rev. C. 1907; re-en. Sec. 7689, R.C.M. 1921; Cal. Civ. C. Sec. 1868; Field Civ. C. Sec. 942; re-en. Sec. 7689, R.C.M. 1935; R.C.M. 1947, 20-405.

70-5-107. Exoneration of owner by surrender of thing to finder. The owner of a thing found may exonerate himself from the claims of the finder by surrendering it to him in satisfaction thereof.

History: En. Sec. 2527, Civ. C. 1895; re-en. Sec. 5185, Rev. C. 1907; re-en. Sec. 7692, R.C.M. 1921; Cal. Civ. C. Sec. 1868; Field. Civ. C. Sec. 945; re-en. Sec. 7692, R.C.M. 1935; R.C.M. 1947, 20-408.

Part 2

Procedure

70-5-201. When finder may sell thing found. The finder of a thing may sell it, if it is a thing which is commonly the subject of sale, when the owner cannot with reasonable diligence be found or being found refuses upon demand to pay the lawful charges of the finder, in the following cases:

(1) when the thing is in danger of perishing or of losing the greater part of its value; or

(2) when the lawful charges of the finder amount to two-thirds of its value.

History: En. Sec. 2525, Civ. C. 1895; re-en. Sec. 5183, Rev. C. 1907; re-en. Sec. 7690, R.C.M. 1921; Cal. Civ. C. Sec. 1869; Field Civ. C. Sec. 943; re-en. Sec. 7690, R.C.M. 1935; R.C.M. 1947, 20-406.

70-5-202. How sale conducted. A sale under the provisions of 70-5-201 must be made in the same manner as the sale of a thing pledged.

History: En. Sec. 2526, Civ. C. 1895; re-en. Sec. 5184, Rev. C. 1907; re-en. Sec. 7691, R.C.M. 1921; Cal. Civ. C. Sec. 1870; Field Civ. C. Sec. 944; re-en. Sec. 7691, R.C.M. 1935; R.C.M. 1947, 20-407.

70-5-203. Finder to make affidavit when owner not known. If the owner is not known to the party saving or finding such property, he must, within 5 days, make an affidavit before some justice of the peace of the county stating when and where he found or saved such property, particularly describing it and, if the property was saved, particularly from what and how he saved the same, stating therein whether the owner of the property is known to him and that he has not secreted, withheld, or disposed of any part of such property.

History: En. Sec. 2900, Pol. C. 1895; re-en. Sec. 1996, Rev. C. 1907; re-en. Sec. 7694, R.C.M. 1921; Cal. Pol. C. Sec. 3136; re-en. Sec. 7694, R.C.M. 1935; R.C.M. 1947, 20-410(part).

70-5-204. Justice to appoint appraisers — duty of appraisers. The justice must then summon three disinterested householders to appraise the same. The appraisers or any two of them must make two lists of the valuation and description of such property and sign and make oath to the same and deliver one of the lists to the finder and the other to the justice of the peace.

History: **En. Sec. 2901, Pol. C. 1895; re-en. Sec. 1997, Rev. C. 1907; re-en. Sec. 7695, R.C.M. 1921; Cal. Pol. C. Sec. 3137; re-en. Sec. 7695, R.C.M. 1935; R.C.M. 1947, 20-411.**

70-5-205. Recording and posting of valuation and description. The justice must file such list, and the finder must transmit a copy of the same to the county clerk and recorder, who must record the same in a book known as the "Estray and Lost Property Book" within 15 days, and the finder must at once set up at the courthouse door and four other public places in the township or city a copy of such valuation and a description of property.

History: **En. Sec. 2902, Pol. C. 1895; re-en. Sec. 1998, Rev. C. 1907; re-en. Sec. 7696, R.C.M. 1921; Cal. Pol. C. Sec. 3138; re-en. Sec. 7696, R.C.M. 1935; R.C.M. 1947, 20-412.**

70-5-206. When property vests in finder — publication. If no owner appears and proves the property within 6 months and the value thereof does not exceed $20, the same vests in the finder; but if the value exceeds $20, the finder must, within 30 days after setting up the list mentioned in 70-5-205, cause a copy of the description to be inserted in some newspaper printed in the county if there be one and if not, in some newspaper printed in the state for 3 weeks. If no owner prove the property within 1 year after such publication, it vests in the finder.

History: **En. Sec. 2903, Pol. C. 1895; re-en. Sec. 1999, Rev. C. 1907; re-en. Sec. 7697, R.C.M. 1921; Cal. Pol. C. Sec. 3139; re-en. Sec. 7697, R.C.M. 1935; R.C.M. 1947, 20-413.**

70-5-207. When finder to restore property. If within 1 year an owner appears and proves the property and pays all reasonable charges, including fees of officers, the finder must restore the same to him. On failure to make restoration of such property or the appraised value thereof, on being tendered such charges and fees, the owner may recover the same or the value thereof by civil action in any court having jurisdiction.

History: **En. Sec. 2904, Pol. C. 1895; re-en. Sec. 2000, Rev. C. 1907; re-en. Sec. 7698, R.C.M. 1921; Cal. Pol. C. Sec. 3140; re-en. Sec. 7698, R.C.M. 1935; R.C.M. 1947, 20-414.**

70-5-208. Proof — how made. The proof required by this chapter must be made before the county clerk and recorder with whom the list provided for herein is filed, and if he is satisfied therefrom that the person claiming to be is the owner, he must certify that fact under his hand and seal.

History: **En. Sec. 2906, Pol. C. 1895; re-en. Sec. 2002, Rev. C. 1907; re-en. Sec. 7700, R.C.M. 1921; Cal. Pol. C. Sec. 3142; re-en. Sec. 7700, R.C.M. 1935; R.C.M. 1947, 20-416.**

70-5-209. Finder failing to make discovery — double recovery. If any person find any money, property, or other valuable thing and fail to make discovery of the same as required by this chapter, he forfeits to the owner double the value thereof.

History: **En. Sec. 2905, Pol. C. 1895; re-en. Sec. 2001, Rev. C. 1907; re-en. Sec. 7699, R.C.M. 1921; Cal. Pol. C. Sec. 3141; re-en. Sec. 7699, R.C.M. 1935; R.C.M. 1947, 20-415.**

CHAPTER 6

BAILMENT — DEPOSIT

Part 1 — Nature and Classification of Deposits

Section
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70-6-102. Voluntary deposit — how made.
70-6-103. Involuntary deposit — how made.
70-6-104. Involuntary depositary bound to take charge.
70-6-105. Involuntary deposit as gratuitous.
70-6-106. Deposit for keeping defined.
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70-6-108. Deposit for exchange — title passes.

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70-6-205. Sale of thing in danger of perishing.
70-6-206. Duty of depositary of animals.
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70-6-209. Notice to true owner of thing wrongfully detained.
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70-6-505. Storage of property in outbuilding — nonliability.

Part 1

Nature and Classification of Deposits

70-6-101. Deposit — voluntary or involuntary. A deposit may be:

(1) voluntary or involuntary; and

(2) for safekeeping or for exchange.

History: **En. Sec. 2440, Civ. C. 1895; re-en. Sec. 5133, Rev. C. 1907; re-en. Sec. 7636, R.C.M. 1921; Cal. Civ. C. Sec. 1813; Field Civ. C. Sec. 907; re-en. Sec. 7636, R.C.M. 1935; R.C.M. 1947, 20-101.**

70-6-102. Voluntary deposit — how made. A voluntary deposit is made by one giving to another, with his consent, the possession of personal property to keep for the benefit of the former or of a third party. The person giving is called the depositor and the person receiving the depositary.

History: **En. Sec. 2441, Civ. C. 1895; re-en. Sec. 5134, Rev. C. 1907; re-en. Sec. 7637, R.C.M. 1921; Cal. Civ. C. Sec. 1814; Field Civ. C. Sec. 908; re-en. Sec. 7637, R.C.M. 1935; R.C.M. 1947, 20-102.**

70-6-103. Involuntary deposit — how made. An involuntary deposit is made:

(1) by the accidental leaving or placing of personal property in the possession of any person, without negligence on the part of the owner; or

(2) in cases of fire, shipwreck, inundation, insurrection, riot, or like extraordinary emergencies, by the owner of personal property committing it out of necessity to the care of any person.

History: **En. Sec. 2442, Civ. C. 1895; re-en. Sec. 5135, Rev. C. 1907; re-en. Sec. 7638, R.C.M. 1921; Cal. Civ. C. Sec. 1815; Field Civ. C. Sec. 909; re-en. Sec. 7638, R.C.M. 1935; R.C.M. 1947, 20-103.**

70-6-104. Involuntary depositary bound to take charge. The person with whom a thing is deposited in the manner described in 70-6-103 is bound to take charge of it if able to do so.

History: **En. Sec. 2443, Civ. C. 1895; re-en. Sec. 5136, Rev. C. 1907; re-en. Sec. 7639, R.C.M. 1921; Cal. Civ. C. Sec. 1816; Field Civ. C. Sec. 910; re-en. Sec. 7639, R.C.M. 1935; R.C.M. 1947, 20-104.**

70-6-105. Involuntary deposit as gratuitous. An involuntary deposit is gratuitous, the depositary being entitled to no reward.

History: **En. Sec. 2481, Civ. C. 1895; re-en. Sec. 5154, Rev. C. 1907; re-en. Sec. 7657, R.C.M. 1921; Cal. Civ. C. Sec. 1845; Field Civ. C. Sec. 928; re-en. Sec. 7657, R.C.M. 1935; R.C.M. 1947, 20-210.**

70-6-106. Deposit for keeping defined. A deposit for keeping is one in which the depositary is bound to return the identical thing deposited.

History: **En. Sec. 2444, Civ. C. 1895; re-en. Sec. 5137, Rev. C. 1907; re-en. Sec. 7640, R.C.M. 1921; Cal. Civ. C. Sec. 1817; Field Civ. C. Sec. 911; re-en. Sec. 7640, R.C.M. 1935; R.C.M. 1947, 20-105.**

70-6-107. Deposit for exchange defined. A deposit for exchange is one in which the depositary is only bound to return a thing corresponding in kind to that which is deposited.

History: **En. Sec. 2445, Civ. C. 1895; re-en. Sec. 5138, Rev. C. 1907; re-en. Sec. 7641, R.C.M. 1921; Cal. Civ. C. Sec. 1818; Field Civ. C. Sec. 912; re-en. Sec. 7641, R.C.M. 1935; R.C.M. 1947, 20-106.**

70-6-108. Deposit for exchange — title passes. A deposit for exchange transfers to the depositary the title to the thing deposited and creates between him and the depositor the relation of debtor and creditor merely.

History: En. Sec. 2540, Civ. C. 1895; re-en. Sec. 5187, Rev. C. 1907; re-en. Sec. 7701, R.C.M. 1921; Cal. Civ. C. Sec. 1878; Field Civ. C. Sec. 947; re-en. Sec. 7701, R.C.M. 1935; R.C.M. 1947, 20-501.

Part 2

Rights and Duties of the Parties Generally

70-6-201. Depositary not to use or open thing deposited. A depositary may not use the thing deposited or permit it to be used for any purpose without the consent of the depositor. He may not, if it is purposely fastened by the depositor, open it without the consent of the latter, except in case of necessity.

History: En. Sec. 2462, Civ. C. 1895; re-en. Sec. 5147, Rev. C. 1907; re-en. Sec. 7650, R.C.M. 1921; Cal. Civ. C. Sec. 1835; Field Civ. C. Sec. 921; re-en. Sec. 7650, R.C.M. 1935; R.C.M. 1947, 20-203.

70-6-202. Liability for damage from wrongful use. A depositary is liable for any damage happening to the thing deposited during his wrongful use thereof unless such damage must inevitably have happened though the property had not been used.

History: En. Sec. 2463, Civ. C. 1895; re-en. Sec. 5148, Rev. C. 1907; re-en. Sec. 7651, R.C.M. 1921; Cal. Civ. C. Sec. 1836; Field Civ. C. Sec. 922; re-en. Sec. 7651, R.C.M. 1935; R.C.M. 1947, 20-204.

70-6-203. Loss or injury of thing deposited. If a thing is lost during its deposit and the depositary refuses to inform the depositor of the circumstances under which the loss or injury occurred so far as he has information concerning them or willfully misrepresents the circumstances to him, the depositary is presumed to have willfully or by gross negligence permitted the loss or injury to occur.

History: En. Sec. 2465, Civ. C. 1895; re-en. Sec. 5150, Rev. C. 1907; re-en. Sec. 7653, R.C.M. 1921; Cal. Civ. C. Sec. 1838; Based on Field Civ. C. Sec. 924; re-en. Sec. 7653, R.C.M. 1935; R.C.M. 1947, 20-206.

70-6-204. Extent of depositary's liability for negligence. The liability of a depositary for negligence cannot exceed the amount which he is informed by the depositor or has reason to suppose the thing deposited to be worth.

History: En. Sec. 2467, Civ. C. 1895; re-en. Sec. 5152, Rev. C. 1907; re-en. Sec. 7655, R.C.M. 1921; Cal. Civ. C. Sec. 1840; Based on Field Civ. C. Sec. 926; re-en. Sec. 7655, R.C.M. 1935; R.C.M. 1947, 20-208.

70-6-205. Sale of thing in danger of perishing. If a thing deposited is in actual danger of perishing before instructions can be obtained from the depositor, the depositary may sell it for the best price obtainable and retain the proceeds as a deposit, giving immediate notice of his proceedings to the depositor.

History: En. Sec. 2464, Civ. C. 1895; re-en. Sec. 5149, Rev. C. 1907; re-en. Sec. 7652, R.C.M. 1921; Cal. Civ. C. Sec. 1837; Field Civ. C. Sec. 923; re-en. Sec. 7652, R.C.M. 1935; R.C.M. 1947, 20-205.

70-6-206. Duty of depositary of animals. A depositary of living animals must provide them with suitable food and shelter and treat them kindly.

History: En. Sec. 2461, Civ. C. 1895; re-en. Sec. 5146, Rev. C. 1907; re-en. Sec. 7649, R.C.M. 1921; Cal. Civ. C. Sec. 1834; Field Civ. C. Sec. 920; re-en. Sec. 7649, R.C.M. 1935; R.C.M. 1947, 20-202.

70-6-207. Service rendered by depositary. So far as any service is rendered by a depositary or required from him, his duties and liabilities are prescribed by the law on employment and service.

History: En. Sec. 2466, Civ. C. 1895; re-en. Sec. 5151, Rev. C. 1907; re-en. Sec. 7654, R.C.M. 1921; Cal. Civ. C. Sec. 1839; Field Civ. C. Sec. 925; re-en. Sec. 7654, R.C.M. 1935; R.C.M. 1947, 20-207.

70-6-208. Notice to owner of adverse claim. A depositary must give prompt notice to the person for whose benefit the deposit was made of any proceedings taken adversely to his interest in the thing deposited which may tend to excuse the depositary from delivering the thing to him.

History: En. Sec. 2453, Civ. C. 1895; re-en. Sec. 5142, Rev. C. 1907; re-en. Sec. 7645, R.C.M. 1921; Cal. Civ. C. Sec. 1825; Field Civ. C. Sec. 916; re-en. Sec. 7645, R.C.M. 1935; R.C.M. 1947, 20-110.

70-6-209. Notice to true owner of thing wrongfully detained. A depositary, who believes that a thing deposited with him is wrongfully detained from its true owner, may give him notice of the deposit, and if within a reasonable time afterwards he does not claim it and sufficiently establish his right thereto and indemnify the depositary against the claim of the depositor, the depositary is exonerated from liability to the person to whom he gave the notice upon returning the thing to the depositor or assuming, in good faith, a new obligation changing his position in respect to the thing to his prejudice.

History: En. Sec. 2454, Civ. C. 1895; re-en. Sec. 5143, Rev. C. 1907; re-en. Sec. 7646, R.C.M. 1921; Cal. Civ. C. Sec. 1826; Field Civ. C. Sec. 917; re-en. Sec. 7646, R.C.M. 1935; R.C.M. 1947, 20-111.

70-6-210. Depositor to indemnify depositary — damage — expenses. A depositor must indemnify the depositary for:

(1) all damage caused to him by the defects or vices of the thing deposited; and

(2) all expenses necessarily incurred by him about the thing, other than such as are involved in the nature of the undertaking.

History: En. Sec. 2460, Civ. C. 1895; re-en. Sec. 5145, Rev. C. 1907; re-en. Sec. 7648, R.C.M. 1921; Cal. Civ. C. Sec. 1833; Field Civ. C. Sec. 919; re-en. Sec. 7648, R.C.M. 1935; R.C.M. 1947, 20-201.

70-6-211. Depositary to deliver on demand. A depositary must deliver the thing to the person for whose benefit it was deposited, on demand, whether the deposit was made for a specified time or not, unless he any common carrier of goods by whom any personal property is lawfully stored before or after the transportation thereof may, after keeping the same in store for 90 days, in default of the payment of the storage or freight money on such personal property, advertise and sell the same at public auction to the highest bidder for cash, first giving notice of the time, the terms, and place of sale and a description of the property to be sold by publication in some newspaper published in the county where the property may be stored. Said notice shall be published at least once a week for 4 weeks next previous to the day of sale and shall specify the amount due on the property to be sold. When a specified time has been agreed upon between the parties for the storage of said property, the same shall not be advertised until the expiration of the time agreed upon.

(2) Should there be no newspaper published in the county where such property is stored, then notice may be given in the newspaper published nearest thereto in some other county in this state.

(3) But no more of such property shall be sold than is necessary to pay the charges due, together with the costs.

History: En. Sec. 1, p. 544, Cod. Stat. 1871; re-en. Sec. 1179, 5th Div. Rev. Stat. 1879; re-en. Sec. 1983, 5th Div. Comp. Stat. 1887; amd. Sec. 2495, Civ. C. 1895; amd. Sec. 1, p. 153, L. 1901; re-en. Sec. 5162, Rev. C. 1907; re-en. Sec. 7665, R.C.M. 1921; Cal. Civ. C. Secs. 1856, 1857; re-en. Sec. 7665, R.C.M. 1935; R.C.M. 1947, 20-306.

70-6-412. Application of proceeds of sale. (1) After paying the expenses of sale, including the publication of notice, the storage or commission merchant or the carrier shall be authorized, out of the proceeds arising from the sale of the property, to retain the amount due him for storage or freight money, or both, due upon any such property, and the excess, if any, must be paid over to the person entitled to the proceeds thereof.

(2) All sales under this part shall vest the title to the property sold in the purchaser thereof.

History: En. Sec. 3, p. 545, Cod. Stat. 1871; re-en. Sec. 1181, 5th Div. Rev. Stat. 1879; re-en. Sec. 1895, 5th Div. Comp. Stat. 1887; amd. Sec. 2496, Civ. C. 1895; re-en. Sec. 2, p. 153, L. 1901; re-en. Sec. 5163, Rev. C. 1907; re-en. Sec. 7666, R.C.M. 1921; re-en. Sec. 7666, R.C.M. 1935; R.C.M. 1947, 20-307.

Part 5

Innkeepers

70-6-501. Innkeeper's liability as to property of guests — dollar limitation. (1) An innkeeper is liable for all losses of or injuries to personal property placed by his guests under his care unless occasioned by an irresistible superhuman cause, by a public enemy, by the negligence of the owner, or by the act of someone whom he brought into the inn.

(2) The liability provided for in subsection (1) may not exceed $500 for all personal property of each registered guest unless the innkeeper consents in writing with the guest to assume a greater liability. An innkeeper whose liability is so limited shall notify the guest at the time of registration, in writing, that this limitation applies.

History: En. Sec. 2500, Civ. C. 1895; re-en. Sec. 5164, Rev. C. 1907; re-en. Sec. 7673, R.C.M. 1921; Cal. Civ. C. Sec. 1859; Field Civ. C. Sec. 936; re-en. Sec. 7673, R.C.M. 1935; amd. Sec. 1, Ch. 14, L. 1977; R.C.M. 1947, 34-101.

70-6-502. No liability without negligence. No hotelkeeper or innkeeper shall be liable to any guest for the loss of wearing apparel, goods, or personal effects where it shall appear that such loss occurred without the fault or negligence of such hotelkeeper or his employees.

History: En. Sec. 2510, Civ. C. 1895; re-en. Sec. 5174, Rev. C. 1907; re-en. Sec. 7681, R.C.M. 1921; re-en. Sec. 7681, R.C.M. 1935; R.C.M. 1947, 34-109.

70-6-503. Loss or damage by fire — liability for negligence. All innkeepers or hotelkeepers coming within the provisions of this part shall be liable for loss of or damage to any baggage or other property of their guests caused by fire in every case where such loss or damage is the result of the negligence of such keepers or their servants.

History: En. Sec. 2509, Civ. C. 1895; re-en. Sec. 5173, Rev. C. 1907; re-en. Sec. 7680, R.C.M. 1921; re-en. Sec. 7680, R.C.M. 1935; R.C.M. 1947, 34-108.

70-6-504. How exempted from liability — safe. If an innkeeper keeps a fireproof safe and gives notice to a guest, either personally or by placing a printed notice in a prominent place in the room occupied by the guest, that he keeps such a safe and will not be liable for money, jewelry, documents, or other articles of value and small compass unless placed therein, he is not liable, except so far as his own acts contribute thereto, for any loss of or injury to such articles not deposited with him and not required by the guest for present use.

History: En. Sec. 2501, Civ. C. 1895; re-en. Sec. 5165, Rev. C. 1907; re-en. Sec. 7674, R.C.M. 1921; Cal. Civ. C. Sec. 1860; Field. Civ. C. Sec. 937; re-en. Sec. 7674, R.C.M. 1935; R.C.M. 1947, 34-102; amd. Sec. 3, Ch. 115, L. 1979.

70-6-505. Storage of property in outbuilding — nonliability. No innkeeper shall be liable for the loss or destruction by fire of the property received by him from a guest, stored or being, with the knowledge of such guest, in a barn or other outbuilding, where it shall appear that such loss or destruction is the work of an incendiary and occurred without the fault or negligence of such innkeeper or his servants.

History: En. Sec. 2508, Civ. C. 1895; re-en. Sec. 5172, Rev. C. 1907; re-en. Sec. 7679, R.C.M. 1921; re-en. Sec. 7679, R.C.M. 1935; R.C.M. 1947, 34-107.

CHAPTER 7

LOANS FOR USE OR EXCHANGE PERSONAL PROPERTY

Part 1 — Loan for Use

Section
70-7-101. Optional loan — use or exchange — applicability of entire chapter.
70-7-102. Loan for use defined.
70-7-103. Title not transferred — increase.
70-7-104. Care required of borrower generally.
70-7-105. Borrower of animal — care required.
70-7-106. Skill required of borrower.
70-7-107. Borrower to repair injuries.
70-7-108. Use of thing lent — what permitted.

70-7-109. Relending forbidden.
70-7-110. Who to bear expenses.
70-7-111. Lender liable for concealed defects.
70-7-112. Right of lender to require return — indemnification of borrower.
70-7-113. When returnable without demand.
70-7-114. Place of return.

Part 2 — Loan for Exchange

70-7-201. Certain sections of previous part applicable.
70-7-202. Loan for exchange defined.
70-7-203. Title to property lent — expenses — increase.
70-7-204. Contract not to be modified by lender.

Part 1

Loan for Use

70-7-101. Optional loan — use or exchange — applicability of entire chapter. A loan which the borrower is allowed by the lender to treat as a loan for use or for exchange, at his option, is subject to all of the provisions of this chapter.

History: En. Sec. 2571, Civ. C. 1895; re-en. Sec. 5202, Rev. C. 1907; re-en. Sec. 7716, R.C.M. 1921; Cal. Civ. C. Sec. 1903; Field Civ. C. Sec. 962; re-en. Sec. 7716, R.C.M. 1935; R.C.M. 1947, 47-115.

70-7-102. Loan for use defined. A loan for use is a contract by which one gives to another the temporary use and possession of personal property, and the latter agrees to return the same thing to him at a future time, without reward for its use.

History: En. Sec. 2550, Civ. C. 1895; re-en. Sec. 5188, Rev. C. 1907; re-en. Sec. 7702, R.C.M. 1921; Cal. Civ. C. Sec. 1884; Field Civ. C. Sec. 948; re-en. Sec. 7702, R.C.M. 1935; R.C.M. 1947, 47-101.

70-7-103. Title not transferred — increase. A loan for use does not transfer the title to the thing, and all its increase during the period of the loan belongs to the lender.

History: En. Sec. 2551, Civ. C. 1895; re-en. Sec. 5189, Rev. C. 1907; re-en. Sec. 7703, R.C.M. 1921; Cal. Civ. C. Sec. 1885; Field Civ. C. Sec. 949; re-en. Sec. 7703, R.C.M. 1935; R.C.M. 1947, 47-102.

70-7-104. Care required of borrower generally. A borrower for use must use great care for the preservation in safety and in good condition of the thing lent.

History: En. Sec. 2552, Civ. C. 1895; re-en. Sec. 5190, Rev. C. 1907; re-en. Sec. 7704, R.C.M. 1921; Cal. Civ. C. Sec. 1886; Field Civ. C. Sec. 950; re-en. Sec. 7704, R.C.M. 1935; R.C.M. 1947, 47-103.

70-7-105. Borrower of animal — care required. One who borrows a living animal for use must treat it with great kindness and provide everything necessary and suitable for it.

History: En. Sec. 2553, Civ. C. 1895; re-en. Sec. 5191, Rev. C. 1907; re-en. Sec. 7705, R.C.M. 1921; Cal. Civ. C. Sec. 1887; Field Civ. C. Sec. 951; re-en. Sec. 7705, R.C.M. 1935; R.C.M. 1947, 47-104.

70-7-106. Skill required of borrower. A borrower for use is bound to have and to exercise such skill in the care of the thing lent as he causes the lender to believe him to possess.

History: En. Sec. 2554, Civ. C. 1895; re-en. Sec. 5192, Rev. C. 1907; re-en. Sec. 7706, R.C.M. 1921; Cal. Civ. C. Sec. 1888; Field Civ. C. Sec. 952; re-en. Sec. 7706, R.C.M. 1935; R.C.M. 1947, 47-105.

70-7-107. Borrower to repair injuries. A borrower for use must repair all deteriorations or injuries to the thing lent which are occasioned by his negligence, however slight.

History: En. Sec. 2555, Civ. C. 1895; re-en. Sec. 5193, Rev. C. 1907; re-en. Sec. 7707, R.C.M. 1921; Cal. Civ. C. Sec. 1889; Field Civ. C. Sec. 953; re-en. Sec. 7707, R.C.M. 1935; R.C.M. 1947, 47-106.

70-7-108. Use of thing lent — what permitted. The borrower of a thing for use may use it for such purposes only as the lender might reasonably anticipate at the time of lending.

History: En. Sec. 2556, Civ. C. 1895; re-en. Sec. 5194, Rev. C. 1907; re-en. Sec. 7708, R.C.M. 1921; Cal. Civ. C. Sec. 1890; Field Civ. C. Sec. 954; re-en. Sec. 7708, R.C.M. 1935; R.C.M. 1947, 47-107.

70-7-109. Relending forbidden. The borrower of a thing for use must not part with it to a third person without the consent of the lender.

History: En. Sec. 2557, Civ. C. 1895; re-en. Sec. 5195, Rev. C. 1907; re-en. Sec. 7709, R.C.M. 1921; Cal. Civ. C. Sec. 1891; Field Civ. C. Sec. 955; re-en. Sec. 7709, R.C.M. 1935; R.C.M. 1947, 47-108.

70-7-110. Who to bear expenses. The borrower of a thing for use must bear all its expenses during the loan, except such as are necessarily incurred by him to preserve it from unexpected and unusual injury. For such expenses he is entitled to compensation from the lender, who may, however, exonerate himself by surrendering the thing to the borrower.

History: En. Sec. 2558, Civ. C. 1895; re-en. Sec. 5196, Rev. C. 1907; re-en. Sec. 7710, R.C.M. 1921; Cal. Civ. C. Sec. 1892; Field Civ. C. Sec. 956; re-en. Sec. 7710, R.C.M. 1935; R.C.M. 1947, 47-109.

70-7-111. Lender liable for concealed defects. The lender of a thing for use must indemnify the borrower for damage caused by defects or vices in it which he knew at the time of lending and concealed from the borrower.

History: En. Sec. 2559, Civ. C. 1895; re-en. Sec. 5197, Rev. C. 1907; re-en. Sec. 7711, R.C.M. 1921; Cal. Civ. C. Sec. 1893; Field Civ. C. Sec. 957; re-en. Sec. 7711, R.C.M. 1935; R.C.M. 1947, 47-110.

70-7-112. Right of lender to require return — indemnification of borrower. The lender of a thing for use may at any time require its return, even though he lent it for a specified time or purpose. But if on the faith of such an agreement the borrower has made such arrangements that a return of the thing before the period agreed upon would cause him loss exceeding the benefit derived by him from the loan, the lender must indemnify him for such loss if he compels such return, the borrower not having in any manner violated his duty.

History: En. Sec. 2560, Civ. C. 1895; re-en. Sec. 5198, Rev. C. 1907; re-en. Sec. 7712, R.C.M. 1921; Cal. Civ. C. Sec. 1894; Field Civ. C. Sec. 958; re-en. Sec. 7712, R.C.M. 1935; R.C.M. 1947, 47-111.

70-7-113. When returnable without demand. If a thing is lent for use for a specified time or purpose, it must be returned to the lender without demand as soon as the time has expired or the purpose has been accomplished. In other cases it need not be returned until demanded.

History: En. Sec. 2561, Civ. C. 1895; re-en. Sec. 5199, Rev. C. 1907; re-en. Sec. 7713, R.C.M. 1921; Cal. Civ. C. Sec. 1895; Field Civ. C. Sec. 959; re-en. Sec. 7713, R.C.M. 1935; R.C.M. 1947, 47-112.

70-7-114. Place of return. The borrower of a thing for use must return it to the lender at the place contemplated by the parties at the time of lending or, if no particular place was so contemplated by them, then at the place where it was at that time.

History: En. Sec. 2562, Civ. C. 1895; re-en. Sec. 5200, Rev. C. 1907; re-en. Sec. 7714, R.C.M. 1921; Cal. Civ. C. Sec. 1896; Field Civ. C. Sec. 960; re-en. Sec. 7714, R.C.M. 1935; R.C.M. 1947, 47-113.

Part 2

Loan for Exchange

70-7-201. Certain sections of previous part applicable. Sections 70-7-111, 70-7-112, and 70-7-113 apply to a loan for exchange.

History: En. Sec. 2574, Civ. C. 1895; re-en. Sec. 5205, Rev. C. 1907; re-en. Sec. 7719, R.C.M. 1921; Cal. Civ. C. Sec. 1906; Field Civ. C. Sec. 965; re-en. Sec. 7719, R.C.M. 1935; R.C.M. 1947, 47-118.

70-7-202. Loan for exchange defined. A loan for exchange is a contract by which one delivers personal property to another and the latter agrees to return to the lender a similar thing at a future time, without reward for its use.

History: En. Sec. 2570, Civ. C. 1895; re-en. Sec. 5201, Rev. C. 1907; re-en. Sec. 7715, R.C.M. 1921; Cal. Civ. C. Sec. 1902; Field Civ. C. Sec. 961; re-en. Sec. 7715, R.C.M. 1935; R.C.M. 1947, 47-114.

70-7-203. Title to property lent — expenses — increase. By a loan for exchange, the title to the thing lent is transferred to the borrower, and he must bear all its expenses and is entitled to all its increase.

History: En. Sec. 2572, Civ. C. 1895; re-en. Sec. 5203, Rev. C. 1907; re-en. Sec. 7717, R.C.M. 1921; Cal. Civ. C. Sec. 1904; re-en. Sec. 7717, R.C.M. 1935; R.C.M. 1947, 47-116.

70-7-204. Contract not to be modified by lender. A lender for exchange cannot require the borrower to fulfill his obligations at a time or in a manner different from that which was originally agreed upon.

History: En. Sec. 2573, Civ. C. 1895; re-en. Sec. 5204, Rev. C. 1907; re-en. Sec. 7718, R.C.M. 1921; Cal. Civ. C. Sec. 1905; Field Civ. C. Sec. 964; re-en. Sec. 7718, R.C.M. 1935; R.C.M. 1947, 47-117.

CHAPTER 8

RENTALS OF PERSONAL PROPERTY

Part 1 — General Provisions

Section
70-8-101. Duties of letter.
70-8-102. Ordinary expenses.

70-8-103. Extraordinary expenses.
70-8-104. Return of thing hired — time and place.

Part 2 — Rental of Ships

70-8-201. Contract for letting of ship.

Part 1

General Provisions

70-8-101. Duties of letter. One who lets personal property must deliver it to the hirer, secure his quiet enjoyment thereof against all lawful claimants, put it into a condition fit for the purpose for which he lets it, and repair all deteriorations thereof not occasioned by the fault of the hirer and not the natural result of its use.

History: En. Sec. 2640, Civ. C. 1895; re-en. Sec. 5236, Rev. C. 1907; re-en. Sec. 7751, R.C.M. 1921; Cal. Civ. C. Sec. 1955; Field Civ. C. Sec. 999; re-en. Sec. 7751, R.C.M. 1935; R.C.M. 1947, 42-211.

70-8-102. Ordinary expenses. A hirer of personal property must bear all such expenses concerning it as might naturally be foreseen to attend it during its use by him. All other expenses must be borne by the letter.

History: En. Sec. 2641, Civ. C. 1895; re-en. Sec. 5237, Rev. C. 1907; re-en. Sec. 7752, R.C.M. 1921; Cal. Civ. C. Sec. 1956; Field Civ. C. Sec. 1000; re-en. Sec. 7752, R.C.M. 1935; R.C.M. 1947, 42-212.

70-8-103. Extraordinary expenses. If a letter fails to fulfill his obligations as prescribed by 70-8-101, the hirer, after giving him notice to do so if such notice can conveniently be given, may expend any reasonable amount necessary to make good the letter's default and may recover such amount from him.

History: En. Sec. 2642, Civ. C. 1895; re-en. Sec. 5238, Rev. C. 1907; re-en. Sec. 7753, R.C.M. 1921; Cal. Civ. C. Sec. 1957; Field Civ. C. Sec. 1001; re-en. Sec. 7753, R.C.M. 1935; R.C.M. 1947, 42-213.

70-8-104. Return of thing hired — time and place. At the expiration of the term for which personal property is hired, the hirer must return it to the letter at the place contemplated by the parties at the time of hiring or, if no particular place was so contemplated by them, at the place at which it was at that time.

History: En. Sec. 2643, Civ. C. 1895; re-en. Sec. 5239, Rev. C. 1907; re-en. Sec. 7754, R.C.M. 1921; Cal. Civ. C. Sec. 1958; Field Civ. C. Sec. 1002; re-en. Sec. 7754, R.C.M. 1935; R.C.M. 1947, 42-214.

Part 2

Rental of Ships

70-8-201. Contract for letting of ship. The contract by which a ship is let is termed a charter party. By it the owner may either let the capacity or burden of the ship, continuing the employment of the owner's master, crew, and equipments, or may surrender the entire ship to the charterer, who then provides them himself. The master or part owner may be a charterer.

History: En. Sec. 2644, Civ. C. 1895; re-en. Sec. 5240, Rev. C. 1907; re-en. Sec. 7755, R.C.M. 1921; Cal. Civ. C. Sec. 1959; Field Civ. C. Sec. 1003; re-en. Sec. 7755, R.C.M. 1935; R.C.M. 1947, 42-215.

CHAPTER 9

DISPOSITION OF UNCLAIMED PROPERTY

Part 1 — General Provisions

Section

70-9-101. Short title.
70-9-102. Definitions.
70-9-103. Nonapplicability — property abandoned or escheated under law of other state — reciprocity.
70-9-104. Uniformity of interpretation.
70-9-105. Department rulemaking — representation by assistant attorney general.

Part 2 — Presumption of Abandonment Kinds of Property

70-9-201. Property held by banking or financial organization or business association.
70-9-202. Unclaimed funds held by life insurance corporation.
70-9-203. Deposits and refunds held by utility.
70-9-204. Stock, dividends, and distributions of business association.
70-9-205. Property of business association or of banking or financial organization held in course of dissolution.
70-9-206. Property held by fiduciary.
70-9-207. Property held by court or public officer or agency.
70-9-208. Miscellaneous property held for another person.

Part 3 — Procedure

70-9-301. Report of abandoned property — duty to prevent abandonment prior to filing.
70-9-302. Notice of property presumed abandoned — publication — mail.
70-9-303. Payment or delivery of abandoned property to department.
70-9-304. Relief from liability by payment or delivery to department.
70-9-305. Reimbursement to holder for payment to owner or other state.
70-9-306. Income accruing after payment or delivery to department.
70-9-307. Period of limitations not to prevent presumption or affect duties.
70-9-308. Sale of abandoned property — notice — title of purchaser.
70-9-309. Deposit of moneys — record — deduction of costs.
70-9-310. Claim for property paid or delivered — filing.
70-9-311. Determination and payment of claim.
70-9-312. Appeal to court from decision of tax board — trial de novo.
70-9-313. Prerogative of department to decline receipt of property.
70-9-314. Examination of records for failure to report.
70-9-315. Proceeding to compel delivery of property.
70-9-316. Penalties.

Part 4 — Common Carriers, Commission Merchants, and Warehousemen

70-9-401. Applicability — Uniform Commercial Code.
70-9-402. Storage of unclaimed property.
70-9-403. Property unclaimed within 90 days to be sold — notice — surplus.
70-9-404. Surplus proceeds unclaimed — disposition.
70-9-405. Responsibility of carrier and bailee after storage.
70-9-406. Sale of property upon which advances are due.

70-9-407. Fees of officers.

Part 5 — Innkeepers

70-9-501. Sale of unclaimed baggage — notice.
70-9-502. Disposition of surplus proceeds.

Part 1

General Provisions

70-9-101. Short title. Parts 1 through 3 of this chapter may be cited as the "Uniform Disposition of Unclaimed Property Act".

History: En. Sec. 30, Ch. 244, L. 1963; R.C.M. 1947, 67-2230.

70-9-102. Definitions. As used in parts 1 through 3, unless the context otherwise requires, the following definitions apply:

(1) "Banking organization" means any bank, national bank, trust company, savings bank, industrial bank, land bank, safe deposit company, or a private banker engaged in business in this state.

(2) "Business association" means any corporation, other than a public corporation, joint-stock company, business trust, partnership, or any association for business purposes of two or more individuals.

(3) "Financial organization" means any savings and loan association, building and loan association, credit union, cooperative bank, or investment company engaged in business in this state.

(4) "Holder" means any person in possession of property subject to parts 1 through 3 belonging to another or who is trustee in case of a trust or is indebted to another on an obligation subject to parts 1 through 3.

(5) "Life insurance corporation" means any association or corporation transacting within this state the business of insurance on the lives of persons or insurance appertaining thereto, including, but not by way of limitation, endowments and annuities.

(6) "Owner" means a depositor in case of a deposit, a beneficiary in case of a trust, or creditor, claimant, or payee in case of other choses in action or any person having a legal or equitable interest in property subject to parts 1 through 3 or his legal representative.

(7) "Person" means any individual, business association, government or political subdivision, public corporation, public authority, estate, trust, two or more persons having a joint or common interest, or any other legal or commercial entity.

(8) "Utility" means any person who owns or operates within this state for public use any plant, equipment, property, franchise, or license for the transmission of communications or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, or gas.

History: En. Sec. 1, Ch. 244, L. 1963; R.C.M. 1947, 67-2201.

70-9-103. Nonapplicability — property abandoned or escheated under law of other state — reciprocity. (1) Parts 1 through 3 shall not apply to any property that has been presumed abandoned or escheated under the laws of another state prior to July 1, 1963.

(2) If specific property which is subject to the provisions of 70-9-201, 70-9-204, 70-9-205, 70-9-206, and 70-9-208 is held for or owed or distributable to an owner whose last known address is in another state by a holder who is subject to the jurisdiction of that state, the specific property is not presumed abandoned in this state and subject to parts 1 through 3 if:

(a) it may be claimed as abandoned or escheated under the laws of such other state; and

(b) the laws of such other state make reciprocal provision that similar specific property is not presumed abandoned or escheatable by such other state when held for or owed or distributable to an owner whose last known address is within this state by a holder who is subject to the jurisdiction of this state.

History: En. Secs. 10, 27, Ch. 244, L. 1963; R.C.M. 1947, 67-2210, 67-2227.

70-9-104. Uniformity of interpretation. Parts 1 through 3 shall be so construed as to effectuate their general purpose to make uniform the law of those states which enact the act.

History: En. Sec. 29, Ch. 244, L. 1963; R.C.M. 1947, 67-2229.

70-9-105. Department rulemaking — representation by assistant attorney general. The department of revenue is hereby authorized to make necessary rules to carry out the provisions of parts 1 through 3 and shall be represented in the enforcement of the provisions of those parts by the special assistant attorney general in charge of escheated estates.

History: En. Sec. 26, Ch. 244, L. 1963; amd. Sec. 16, Ch. 216, L. 1971; amd. Sec. 39, Ch. 391, L. 1973; R.C.M. 1947, 67-2226.

Part 2

Presumption of Abandonment Kinds of Property

70-9-201. Property held by banking or financial organization or business association. The following property held or owing by a banking or financial organization or by a business association is presumed abandoned:

(1) any demand, savings, or matured time deposit made in this state with a banking organization, together with any interest or dividend thereon, excluding any charges that may lawfully be withheld, unless the owner has within 7 years:

(a) increased or decreased the amount of the deposit or presented the passbook or other similar evidence of the deposit for the crediting of interest;

(b) corresponded in writing with the banking organization concerning the deposit; or

(c) otherwise indicated an interest in the deposit as evidenced by a memorandum on file with the banking organization;

(2) any funds paid in this state toward the purchase of shares or other interest in a financial organization or any deposit made therewith in this

state and any interest or dividends thereon, excluding any charges that may lawfully be withheld, unless the owner has within 7 years:

(a) increased or decreased the amount of the funds or deposit or presented an appropriate record for the crediting of interest or dividends;

(b) corresponded in writing with the financial organization concerning the funds or deposit; or

(c) otherwise indicated an interest in the funds or deposit as evidenced by a memorandum on file with the financial organization;

(3) any sum payable on checks certified in this state or on written instruments issued in this state on which a banking or financial organization or business association is directly liable, including, by way of illustration but not of limitation, certificates of deposit, drafts, money orders, and travelers' checks that, with the exception of travelers' checks, has been outstanding for more than 7 years from the date it was payable or from the date of its issuance if payable on demand or, in the case of travelers' checks, that has been outstanding for more than 15 years from the date of its issuance unless the owner has within 7 years or within 15 years in the case of travelers' checks corresponded in writing with the banking or financial organization or business association concerning it or otherwise indicated an interest as evidenced by a memorandum on file with the banking or financial organization or business association;

(4) any funds or other personal property, tangible or intangible, removed from a safe deposit box or any other safekeeping repository or agency or collateral deposit box in this state on which the lease or rental period has expired due to nonpayment of rental charges or other reason or any surplus amounts arising from the sale thereof pursuant to law that have been unclaimed by the owner for more than 7 years from the date on which the lease or rental period expired.

History: En. Sec. 2, Ch. 244, L. 1963; amd. Sec. 1, Ch. 226, L. 1967; R.C.M. 1947, 67-2202.

70-9-202. Unclaimed funds held by life insurance corporation. (1) Unclaimed funds, as defined in this section, held and owing by a life insurance corporation shall be presumed abandoned if the last known address, according to the records of the corporation, of the person entitled to the funds is within this state. If a person other than the insured or annuitant is entitled to the funds and no address of such person is known to the corporation or if it is not definite and certain from the records of the corporation what person is entitled to the funds, it is presumed that the last known address of the person entitled to the funds is the same as the last known address of the insured or annuitant according to the records of the corporation.

(2) "Unclaimed funds", as used in this section, means all moneys held and owing by any life insurance corporation unclaimed and unpaid for more than 7 years after the moneys became due and payable as established from the records of the corporation under any life or endowment insurance policy or annuity contract which has matured or terminated. A life insurance policy not matured by actual proof of the death of the insured is deemed to be matured and the proceeds thereof are deemed to be due and payable if such policy was in force when the insured attained the limiting age under the mortality table on which the reserve is based unless the person appearing

entitled thereto has within the preceding 7 years assigned, readjusted, or paid premiums on the policy or subjected the policy to loan or corresponded in writing with the life insurance corporation concerning the policy. Moneys otherwise payable according to the records of the corporation are deemed due and payable although the policy or contract has not been surrendered as required.

History: **En. Sec. 3, Ch. 244, L. 1963; R.C.M. 1947, 67-2203.**

70-9-203. Deposits and refunds held by utility. The following funds held or owing by any utility are presumed abandoned:

(1) any deposit made by a subscriber with a utility to secure payment for or any sum paid in advance for utility services to be furnished in this state, less any lawful deductions, that has remained unclaimed by the person appearing on the records of the utility entitled thereto for more than 7 years after the termination of the services for which the deposit or advance payment was made;

(2) any sum which a utility has been ordered to refund and which was received for utility services rendered in this state, together with any interest thereon, less any lawful deductions, that has remained unclaimed by the person appearing on the records of the utility entitled thereto for more than 7 years after the date it became payable in accordance with the final determination or order providing for the refund.

History: **En. Sec. 4, Ch. 244, L. 1963; R.C.M. 1947, 67-2204.**

70-9-204. Stock, dividends, and distributions of business association. (1) Any stock or other certificate of ownership or any dividend, profit, distribution, interest, payment on principal, or other sum held or owing by a business association for or to a shareholder, certificate holder, member, bondholder, or other security holder or a participating patron of a cooperative, who has not claimed it or corresponded in writing with the business association concerning it within 7 years after the date prescribed for payment or delivery is presumed abandoned if it is held or owing by a business association:

(a) organized under the laws of or created in this state; or

(b) doing business in this state but not organized under the laws of or created in this state and the records of the business association indicate that the last-known address of the person entitled thereto is in this state.

(2) Any intangible interest in a business association as evidenced by the stock or membership records of the association is presumed abandoned and the association deemed the holder thereof when:

(a) the interest in the association is owned by a person who for more than 7 years has not claimed a dividend or other sum referred to in subsection (1);

(b) the records of the association indicate that the last-known address of the person entitled to the dividend is in this state; and

(c) the association is:

(i) organized under the laws of or created in this state; or

(ii) doing business in this state but not organized under the laws of or created in this state.

(3) Any dividends or other distributions held for or owing to a person at the time an intangible interest in a business association is presumed abandoned pursuant to subsection (2) are presumed abandoned.

History: **En. Sec. 5, Ch. 244, L. 1963; R.C.M. 1947, 67-2205; amd. Sec. 1, Ch. 575, L. 1979.**

70-9-205. Property of business association or of banking or financial organization held in course of dissolution. All intangible personal property distributable in the course of a voluntary dissolution of a business association, banking organization, or financial organization organized under the laws of or created in this state that is unclaimed by the owner on the date for final distribution is presumed abandoned.

History: En. Sec. 6, Ch. 244, L. 1963; R.C.M. 1947, 67-2206; amd. Sec. 2, Ch. 575, L. 1979.

70-9-206. Property held by fiduciary. All intangible personal property and any income or increment thereon held in a fiduciary capacity for the benefit of another person is presumed abandoned unless the owner has, within 7 years after it becomes payable or distributable, increased or decreased the principal, accepted payment of principal or income, corresponded in writing concerning the property, or otherwise indicated an interest as evidenced by a memorandum on file with the fiduciary:

(1) if the property is held by a business association, banking organization, or financial organization organized under the laws of or created in this state;

(2) if it is held by a business association, banking organization, or financial organization doing business in this state but not organized under the laws of or created in this state and the records of the business association, banking organization, or financial organization indicate that the last known address of the person entitled thereto is in this state; or

(3) if it is held in this state by another person.

History: En. Sec. 7, Ch. 244, L. 1963; R.C.M. 1947, 67-2207.

70-9-207. Property held by court or public officer or agency. (1) All intangible personal property held for the owner by any court, public corporation, public authority, or public officer of this state or a political subdivision thereof that has remained unclaimed by the owner for more than 7 years is presumed abandoned.

(2) All intangible personal property held for the owner by any court, department, agency, or officer of the United States, that has remained unclaimed by the owner for more than 7 years is presumed abandoned when the records of the holder indicate that the last-known address of the owner is in this state.

History: En. Sec. 8, Ch. 244, L. 1963; R.C.M. 1947, 67-2208; amd. Sec. 3, Ch. 575, L. 1979.

70-9-208. Miscellaneous property held for another person. All intangible personal property not otherwise covered by parts 1 through 3, including any income or increment thereon and deducting any lawful charges, that is held or owing in this state in the ordinary course of the holder's business and has remained unclaimed by the owner for more than 7 years after it became payable or distributable is presumed abandoned.

History: En. Sec. 9, Ch. 244, L. 1963; R.C.M. 1947, 67-2209.

Part 3

Procedure

70-9-301. Report of abandoned property — duty to prevent abandonment prior to filing. (1) Every person holding moneys or other property, tangible or intangible, presumed abandoned under parts 1 through 3 shall report the property to the department of revenue as hereinafter provided.

(2) The report shall be verified and shall include:

(a) except with respect to travelers' checks and money orders, the name, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of any property of value of $10 or more presumed abandoned under parts 1 through 3;

(b) in case of unclaimed moneys of life insurance corporations, the full name of the insured or annuitant and his last known address according to the life insurance corporation's records;

(c) the nature and identifying number, if any, or description of the property and the amount appearing from the records to be due. Items of value under $10 each may be reported in aggregate.

(d) the date when the property became payable, demandable, or returnable and the date of the last transaction with the owner with respect to the property; and

(e) other information which the department of revenue prescribes by rule as necessary for the administration of parts 1 through 3.

(3) If the person holding property presumed abandoned is a successor to other persons who previously held the property for the owner or if the holder has changed his name while holding the property, he shall file with his report all prior known names and addresses of each holder of the property.

(4) The report shall be filed before November 1 every 3 years as of June 30 next preceding, but the reports of life insurance corporations, banking and financial organizations, and cooperatives shall be filed before May 1 of each year as of December 31 next preceding. The department may request that any other reports be filed each year. The department may postpone the reporting date upon written request by any person required to file a report. The department shall furnish forms for this report.

(5) If the holder of property presumed abandoned under parts 1 through 3 knows the whereabouts of the owner and if the owner's claim has not been barred by the statute of limitations, the holder shall before filing the annual report communicate with the owner and take necessary steps to prevent abandonment from being presumed. The holder shall exercise due diligence to ascertain the whereabouts of the owner.

(6) Verification if made by a partnership shall be executed by a partner; if made by an unincorporated association or private corporation, by an officer; and if made by a public corporation, by its chief fiscal officer.

History: En. Sec. 11, Ch. 244, L. 1963; amd. Sec. 1, Ch. 21, L. 1967; amd. Sec. 2, Ch. 226, L. 1967; amd. Sec. 1, Ch. 216, L. 1971; amd. Sec. 24, Ch. 391, L. 1973; amd. Sec. 1, Ch. 195, L. 1977; R.C.M. 1947, 67-2211(1) thru (6).

70-9-302. Notice of property presumed abandoned — publication — mail. (1) Within 120 days from the filing of the report required by 70-9-301, the department of revenue shall publish notice at least once each week for 2 successive weeks in an English language newspaper of general circulation in the county in this state in which is located the last known address of any person to be named in the notice. If no address is listed or if the address is outside this state, the notice shall be published in the county in which the holder of the abandoned property has his principal place of business within this state.

(2) The published notice shall be entitled "Notice of Names of Persons Appearing to Be Owners of Abandoned Property" and shall contain:

(a) the names in alphabetical order and last known addresses, if any, of persons listed in the report and entitled to notice within the county as hereinbefore specified;

(b) a statement that information concerning the amount or description of the property and the name and address of the holder may be obtained by any persons possessing an interest in the property by addressing an inquiry to the department;

(c) a statement that if proof of claim is not presented by the owner to the holder and if the owner's right to receive the property is not established to the holder's satisfaction within 65 days from the date of the second published notice, the abandoned property will be placed not later than 85 days after such publication date in the custody of the department to whom all further claims must thereafter be directed.

(3) The department is not required to publish in such notice any item of less than $50 unless the department considers such publication to be in the public interest.

(4) Within 120 days from the receipt of the report required by 70-9-301, the department shall mail a notice to each person having an address listed therein who appears to be entitled to property of the value of $50 or more presumed abandoned under parts 1 through 3.

(5) The mailed notice shall contain:

(a) a statement that, according to a report filed with the department, property is being held to which the addressee appears entitled;

(b) the name and address of the person holding the property and any necessary information regarding changes of name and address of the holder;

(c) a statement that if satisfactory proof of claim is not presented by the owner to the holder by the date specified in the published notice, the property will be placed in the custody of the department to whom all further claims must be directed.

(6) This section is not applicable to sums payable on travelers' checks or money orders presumed abandoned under 70-9-201.

History: En. Sec. 12, Ch. 244, L. 1963; amd. Sec. 3, Ch. 226, L. 1967; amd. Sec. 2, Ch. 216, L. 1971; amd. Sec. 25, Ch. 391, L. 1973; R.C.M. 1947, 67-2212; amd. Sec. 4, Ch. 115, L. 1979; amd. Sec. 4, Ch. 575, L. 1979.

70-9-303. Payment or delivery of abandoned property to department. Every person who has filed a report as provided by 70-9-301 shall, within 20 days after the time specified in 70-9-302 for claiming the property from the holder or, in the case of sums payable on travelers' checks or money orders presumed abandoned under 70-9-201, within 20 days after the filing of the report, pay or deliver to the department of revenue all abandoned property specified in this report, except that if the owner establishes his right to receive the abandoned property to the satisfaction of the holder within the time specified in 70-9-302 or if it appears that for some other reason the presumption of abandonment is erroneous, the holder need not pay or deliver the property, which will no longer be presumed abandoned, to the department but in lieu thereof shall file a verified written explanation of the proof of claim or of the error in the presumption of abandonment.

History: En. Sec. 13, Ch. 244, L. 1963; amd. Sec. 4, Ch. 226, L. 1967; amd. Sec. 3, Ch. 216, L. 1971; amd. Sec. 26, Ch. 391, L. 1973; R.C.M. 1947, 67-2213.

70-9-304. Relief from liability by payment or delivery to department. (1) Upon the payment or delivery of abandoned property to the department of revenue, the state shall assume custody and shall be responsible for the safekeeping thereof.

(2) Any person who pays or delivers abandoned property to the department under parts 1 through 3 is relieved of all liability to the extent of the value of the property so paid or delivered for any claim which then exists or which thereafter may arise or be made in respect to the property.

(3) Any person who delivers duplicate stock or other duplicate certificates of ownership to the department under parts 1 through 3 is relieved of all liability for any claim which then exists or which thereafter may arise or be made in respect to the property, including but not limited to a claim by a person attempting to redeem the original certificate.

History: En. Sec. 14, Ch. 244, L. 1963; amd. Sec. 4, Ch. 216, L. 1971; amd. Sec. 27, Ch. 391, L. 1973; R.C.M. 1947, 67-2214(part); amd. Sec. 5, Ch. 575, L. 1979.

70-9-305. Reimbursement to holder for payment to owner or other state. (1) Any holder who has paid moneys to the department of revenue pursuant to parts 1 through 3 may make payment to any person appearing to such holder to be entitled thereto, and upon proof of such payment and proof that the payee was entitled thereto, the department shall forthwith reimburse the holder for the payment.

(2) Any holder who has paid moneys to the department pursuant to parts 1 through 3 and after exhausting his legal remedies is compelled by authority of another jurisdiction to make a second payment to any other state, upon certified proof thereof and upon proof that the department was notified in writing of the claim of such other state within 30 days after such claim has been asserted, the department shall refund to such holder the amount of such second payment not in excess of the amount paid to the department under parts 1 through 3.

History: En. Sec. 14, Ch. 244, L. 1963; amd. Sec. 4, Ch. 216, L. 1971; amd. Sec. 27, Ch. 391, L. 1973; R.C.M. 1947, 67-2214(part).

70-9-306. Income accruing after payment or delivery to department. When property is paid or delivered to the department of revenue under parts 1 through 3, the owner is not entitled to receive income or other increments accruing thereafter.

History: En. Sec. 15, Ch. 244, L. 1963; amd. Sec. 5, Ch. 216, L. 1971; amd. Sec. 28, Ch. 391, L. 1973; R.C.M. 1947, 67-2215.

70-9-307. Period of limitations not to prevent presumption or affect duties. The expiration of any period of time specified by statute or court order during which an action or proceeding may be commenced or enforced to obtain payment of a claim for money or recovery of property shall not prevent the money or property from being presumed abandoned property or affect any duty to file a report required by parts 1 through 3 or to pay or deliver abandoned property to the department of revenue.

History: En. Sec. 16, Ch. 244, L. 1963; amd. Sec. 6, Ch. 216, L. 1971; amd. Sec. 29, Ch. 391, L. 1973; R.C.M. 1947, 67-2216.

70-9-308. Sale of abandoned property — notice — title of purchaser. (1) Except as provided in subsection (2), all abandoned property other than money delivered to the department of revenue under parts 1 through 3 shall within 1 year after the delivery be sold by the department to the highest bidder at public sale in whatever city in the state affords in the department's judgment the most favorable market for the property involved. The department may decline highest bid and reoffer the property for sale if the department considers the price bid insufficient. The department need not offer any property for sale if, in the department's opinion, the probable cost of sale exceeds the value of the property.

(2) Securities listed on an established stock exchange shall be sold at the prevailing prices on such exchange. Other securities may be sold over the counter at prevailing prices or by such other method as the department may determine to be advisable. United States government savings bonds and United States war bonds shall be presented to the United States for payment. Securities that have little or no value may be held by the department of revenue and sold at its discretion as provided by this section.

(3) Any sale held under this section shall be preceded by a single publication of notice thereof at least 3 weeks in advance of sale in an English language newspaper of general circulation in the county where the property is to be sold.

(4) The purchaser at any sale conducted by the department pursuant to parts 1 through 3 shall receive title to the property purchased free from all claims of the owner or prior holder thereof and of all persons claiming through or under them. The department shall execute all documents necessary to complete the transfer of title.

History: En. Sec. 17, Ch. 244, L. 1963; amd. Sec. 7, Ch. 216, L. 1971; amd. Sec. 30, Ch. 391, L. 1973; R.C.M. 1947, 67-2217; amd. Sec. 6, Ch. 575, L. 1979.

70-9-309. Deposit of moneys — record — deduction of costs. (1) All moneys received under parts 1 through 3, including the proceeds from the sale of abandoned property under 70-9-308, shall forthwith be deposited by the department of revenue with the state treasurer for credit to the trust and legacy fund, public school account of the state, except that the state treasurer shall retain in the agency fund an amount not exceeding $25,000 from which he shall make prompt payment of claims allowed by the department as hereinafter provided.

(2) Before making the deposit the department shall record the name and last known address of each person appearing from the holders' reports to be entitled to the abandoned property and of the name and last known address of each insured person or annuitant and, with respect to each policy or contract listed in the report of a life insurance corporation, its number, the name of the corporation, and the amount due. The record shall be available for public inspection at all reasonable business hours.

(3) Before making any deposit to the credit of the public school account, the department may deduct:

(a) any costs in connection with sale of abandoned property;

(b) any costs of mailing and publication in connection with any abandoned property; and

(c) reasonable service charges.

History: **En. Sec. 18, Ch. 244, L. 1963; amd. Sec. 8, Ch. 216, L. 1971; amd. Sec. 31, Ch. 391, L. 1973; R.C.M. 1947, 67-2218.**

70-9-310. Claim for property paid or delivered — filing. Any person claiming an interest in any property delivered to the state under parts 1 through 3 may file a claim thereto or to the proceeds from the sale thereof on the form prescribed by the department of revenue, except that no claim for less than $10 may be filed.

History: **En. Sec. 19, Ch. 244, L. 1963; amd. Sec. 9, Ch. 216, L. 1971; amd. Sec. 32, Ch. 391, L. 1973; amd. Sec. 2, Ch. 195, L. 1977; R.C.M. 1947, 67-2219.**

70-9-311. Determination and payment of claim. (1) The department of revenue shall consider any claim filed under parts 1 through 3 and issue a written determination of the claim.

(2) An aggrieved claimant may appeal to the state tax appeal board, which shall hold a hearing and receive evidence concerning the claim. If a hearing is held, the board shall prepare a finding and a decision in writing on each claim filed, stating the substance of any evidence heard by the board and the reasons for the board's decision. The decision shall be a public record.

(3) If the claim is allowed, the department shall make payment forthwith. The claim shall be paid without deduction for costs of notices or sale or for service charges.

History: **En. Sec. 20, Ch. 244, L. 1963; amd. Sec. 10, Ch. 216, L. 1971; amd. Sec. 33, Ch. 391, L. 1973; amd. Sec. 9, Ch. 155, L. 1977; R.C.M. 1947, 67-2220.**

70-9-312. Appeal to court from decision of tax board — trial de novo. Any person aggrieved by a decision of the state tax appeal board or as to whose claim the board has failed to act within 90 days after the filing of the claim may commence an action in the district court of Lewis and Clark County to establish his claim. The proceeding shall be brought within 90 days after the decision of the state tax appeal board or within 180 days from the filing of the claim if the board fails to act. The action shall be tried de novo without a jury.

History: **En. Sec. 21, Ch. 244, L. 1963; amd. Sec. 11, Ch. 216, L. 1971; amd. Sec. 34, Ch. 391, L. 1973; amd. Sec. 10, Ch. 155, L. 1977; R.C.M. 1947, 67-2221.**

70-9-313. Prerogative of department to decline receipt of property. The department of revenue, after receiving reports of property deemed abandoned pursuant to parts 1 through 3, may decline to receive any property reported which the department deems to have a value less than the cost of giving notice and holding sale or the department may, if the department deems it desirable because of the small sum involved, postpone taking possession until a sufficient sum accumulates.

History: **En. Sec. 22, Ch. 244, L. 1963; amd. Sec. 12, Ch. 216, L. 1971; amd. Sec. 35, Ch. 391, L. 1973; R.C.M. 1947, 67-2222.**

70-9-314. Examination of records for failure to report. (1) The department of revenue or its designated agent may at reasonable times and upon reasonable notice examine the records of any person if the department has reason to believe that such person has failed to report property that should have been reported pursuant to parts 1 through 3. In addition, the department shall, in the course of conducting an investigation, examination, or audit under Title 15, identify any abandoned property which is subject to parts 1 through 3.

(2) The commissioner of insurance shall, in the course of conducting an investigation, examination, or audit under Title 33, identify any abandoned property which is subject to parts 1 through 3 and shall, as soon as practicable, give a detailed report of any such identification to the department of revenue.

(3) The department of commerce shall, in the course of conducting an investigation, examination, or audit under Title 32, identify any abandoned property which is subject to parts 1 through 3 and shall, as soon as practicable, give a detailed report of any such identification to the department of revenue.

History: En. Sec. 23, Ch. 244, L. 1963; amd. Sec. 13, Ch. 216, L. 1971; amd. Sec. 36, Ch. 391, L. 1973; R.C.M. 1947, 67-2223; amd. Sec. 1, Ch. 128, L. 1979; amd. Sec. 2, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department of commerce" for "department of business regulation" in (3).

70-9-315. Proceeding to compel delivery of property. If any person refuses to deliver property to the department of revenue as required under parts 1 through 3, the department shall bring an action in a court of appropriate jurisdiction to enforce such delivery.

History: En. Sec. 24, Ch. 244, L. 1963; amd. Sec. 14, Ch. 216, L. 1971; amd. Sec. 37, Ch. 391, L. 1973; R.C.M. 1947, 67-2224.

70-9-316. Penalties. (1) Any person who willfully fails to render any report or perform other duties required under parts 1 through 3 shall be punished by a fine of $50 for each day such report is withheld but not more than $1,000.

(2) Any person who willfully refuses to pay or deliver abandoned property to the department of revenue as required under parts 1 through 3 shall be punished by a fine of not less than $100 or more than $1,000 or imprisonment for not more than 6 months, or both, in the discretion of the court.

History: En. Sec. 25, Ch. 244, L. 1963; amd. Sec. 15, Ch. 216, L. 1971; amd. Sec. 38, Ch. 391, L. 1973; R.C.M. 1947, 67-2225.

Part 4

Common Carriers, Commission Merchants, and Warehousemen

70-9-401. Applicability — Uniform Commercial Code. The provisions of this part apply only to the extent not otherwise provided for in the Uniform Commercial Code.

History: En. 20-314 by Sec. 11-116, Ch. 264, L. 1963; R.C.M. 1947, 20-314.

70-9-402. Storage of unclaimed property. When any goods, merchandise, or other property has been received by any railroad or express company or other common carrier, commission merchants, or warehousemen for transportation or safekeeping and are not delivered to the owner, consignee, or other authorized person, the carrier, commission merchant, or warehouseman may hold or store the same with some responsible person until the freight and all just and reasonable charges are paid.

History: En. Sec. 2920, Pol. C. 1895; re-en. Sec. 2003, Rev. C. 1907; re-en. Sec. 7667, R.C.M. 1921; Cal. Pol. C. Sec. 3152; re-en. Sec. 7667, R.C.M. 1935; R.C.M. 1947, 20-308.

70-9-403. Property unclaimed within 90 days to be sold — notice — surplus. (1) If no person calls for the property within 90 days from the receipt thereof and pays freight and charges thereon, the carrier, commission merchant, or warehouseman may sell such property or so much thereof, at auction to the highest bidder, as will pay freight and charges, first having given 20 days' notice of the time and place of sale to the owner, consignee, or consignor, when known, and by advertisement in a daily paper 10 days (or if in a weekly paper, 4 weeks), published where such sale is to take place.

(2) If any surplus is left after paying freight, storage, cost of advertising, and other reasonable charges, the same must be paid over to the owner of such property at any time thereafter, upon demand being made therefor or within 60 days after the sale.

History: En. Sec. 2921, Pol. C. 1895; re-en. Sec. 2004, Rev. C. 1907; re-en. Sec. 7668, R.C.M. 1921; Cal. Pol. C. Sec. 3153; re-en. Sec. 7668, R.C.M. 1935; R.C.M. 1947, 20-309.

70-9-404. Surplus proceeds unclaimed — disposition. If the owner or his agent fails to demand such surplus within 60 days of the time of such sale, then it must be paid into the county treasury, subject to the order of the owner.

History: En. Sec. 2922, Pol. C. 1895; re-en. Sec. 2005, Rev. C. 1907; re-en. Sec. 7669, R.C.M. 1921; Cal. Pol. C. Sec. 3154; re-en. Sec. 7669, R.C.M. 1935; R.C.M. 1947, 20-310.

70-9-405. Responsibility of carrier and bailee after storage. After the storage of goods, merchandise, or property as provided in this part, the responsibility of the carrier ceases, nor is the person with whom the same is stored liable for any loss or damage on account thereof unless the same results from his negligence or want of proper care.

History: En. Sec. 2923, Pol. C. 1895; re-en. Sec. 2006, Rev. C. 1907; re-en. Sec. 7670, R.C.M. 1921; Cal. Pol. Sec. 3155; re-en. Sec. 7670, R.C.M. 1935; R.C.M. 1947, 20-311.

70-9-406. Sale of property upon which advances are due. When any commission merchant or warehouseman receives on consignment produce, merchandise, or other property and makes advances thereon, either to the owner or for freight and charges, he may, if the same is not paid to him within 90 days from the date of such advances, cause the produce, merchandise, or property on which the advances were made to be advertised and sold as provided in this part.

History: En. Sec. 2924, Pol. C. 1895; re-en. Sec. 2007, Rev. C. 1907; re-en. Sec. 7671, R.C.M. 1921; Cal. Pol. C. Sec. 3156; re-en. Sec. 7671, R.C.M. 1935; R.C.M. 1947, 20-312.

70-9-407. Fees of officers. The fees of officers under this part are the same as allowed for similar services in other cases provided in this code to be paid by the taker-up or finder and recovered of the owner.

History: En. Sec. 2925, Pol. C. 1895; re-en. Sec. 2008, Rev. C. 1907; re-en. Sec. 7672, R.C.M. 1921; Cal. Pol. C. Sec. 3157; re-en. Sec. 7672, R.C.M. 1935; R.C.M. 1947, 20-313.

Part 5

Innkeepers

70-9-501. Sale of unclaimed baggage — notice. (1) Whenever any trunk, carpetbag, valise, box, bundle, or other baggage comes into the possession of the keeper of any hotel, inn, boardinghouse, or lodginghouse, as such, and remains unclaimed for the period of 6 months, such keeper may proceed to sell the same at public auction and out of the proceeds of such sale may retain the charges for storage, if any, and the expense of advertising and sale thereof.

(2) But no such sale shall be made until the expiration of 4 weeks from the first publication of notice of such sale in a newspaper published in or nearest the city, town, or place in which said hotel, inn, boardinghouse, or lodginghouse is situated.

(3) Said notice shall be published once a week for 4 successive weeks in some newspaper, daily or weekly, of general circulation and shall contain:

(a) a description of each trunk, carpetbag, valise, box, bundle, or other baggage, as near as may be;

(b) the name of the owner, if known;

(c) the name of said keeper and the time and place of sale.

(4) The expenses incurred for advertising shall be a lien upon such trunk, carpetbag, valise, box, bundle, or other baggage, in a ratable proportion, according to the value of such piece of property or thing or article sold.

History: En. Sec. 2503, Civ. C. 1895; re-en. Sec. 5167, Rev. C. 1907; re-en. Sec. 7676, R.C.M. 1921; Cal. Civ. C. Sec. 1862; re-en. Sec. 7676, R.C.M. 1935; R.C.M. 1947, 34-104(part).

70-9-502. Disposition of surplus proceeds. In case any balance arising from such sale shall not be claimed by the rightful owner within 1 week from the day of said sale, the same shall be paid into the treasury of the county in which such sale took place, and if the same be not claimed by the owner thereof or his legal representatives within 1 year thereafter, the same shall be paid into the general fund of said county.

History: En. Sec. 2503, Civ. C. 1895; re-en. Sec. 5167, Rev. C. 1907; re-en. Sec. 7676, R.C.M. 1921; Cal. Civ. C. Sec. 1862; re-en. Sec. 7676, R.C.M. 1935; R.C.M. 1947, 34-104(part).

CHAPTERS 10 THROUGH 14

RESERVED

CHAPTER 15

DEFINITIONS AND KINDS OF ESTATES IN REAL PROPERTY

Part 1 — Real Property Defined Fixtures and Appurtenances

Section

70-15-101. Real property defined.

70-15-102. Land defined.
70-15-103. Fixture defined.
70-15-104. Fixtures attached to mines.
70-15-105. Incident or appurtenance defined.

Part 2 — Classification of Interests in Real Property

70-15-201. Application of classifications.
70-15-202. Enumeration of estates.
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70-15-204. Estates tail abolished — considered fee simple.
70-15-205. Remainder limited upon fee tail valid — vesting.
70-15-206. Freehold estates — chattels real — chattel interests.
70-15-207. Estate for life of third person — freehold.
70-15-208. Term of years — suspension of absolute ownership.
70-15-209. Future estate — right of possession at future day.
70-15-210. Reversion.
70-15-211. Remainder.
70-15-212. Future and contingent estates — how created.
70-15-213. Remainder upon a contingency.
70-15-214. Remainder not upon a contingency — when to take effect.
70-15-215. Remainder to heirs of tenant for life — effect of.
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Part 3 — Powers

70-15-301. Power defined.
70-15-302. Who may not execute power.
70-15-303. Married persons — execution.
70-15-304. Power — how executed.

Part 1

Real Property Defined
Fixtures and Appurtenances

70-15-101. Real property defined. Real or immovable property consists of:

(1) land;
(2) that which is affixed to land;
(3) that which is incidental or appurtenant to land;
(4) that which is immovable by law.

History: En. Sec. 1074, Civ. C. 1895; re-en. Sec. 4425, Rev. C. 1907; re-en. Sec. 6667, R.C.M. 1921; Cal. Civ. C. Sec. 658; Based on Field Civ. C. Sec. 163; re-en. Sec. 6667, R.C.M. 1935; R.C.M. 1947, 67-207.

70-15-102. Land defined. Land is the solid material of the earth, whatever may be the ingredients of which it is composed, whether soil, rock, or other substance.

History: En. Sec. 1075, Civ. C. 1895; re-en. Sec. 4426, Rev. C. 1907; re-en. Sec. 6668, R.C.M. 1921; Cal. Civ. C. Sec. 659; Field Civ. C. Sec. 164; re-en. Sec. 6668, R.C.M. 1935; R.C.M. 1947, 67-208.

70-15-103. Fixture defined. A thing is deemed to be affixed to land when it is:

(1) attached to it by roots, as in the case of trees, vines, or shrubs;
(2) imbedded in it, as in the case of walls;
(3) permanently resting upon it, as in the case of buildings; or
(4) permanently attached to what is thus permanent as by means of cement, plaster, nails, bolts, or screws.

History: En. Sec. 1076, Civ. C. 1895; re-en. Sec. 4427, Rev. C. 1907; re-en. Sec. 6669, R.C.M. 1921; Cal. Civ. C. Sec. 660; Field Civ. C. Sec. 165; re-en. Sec. 6669, R.C.M. 1935; R.C.M. 1947, 67-209.

70-15-104. Fixtures attached to mines. Sluice boxes, flumes, hose, pipes, railway tracks, cars, blacksmith shops, mills, and all other machinery or tools used in working or developing a mine are to be deemed affixed to the mine.

History: En. Sec. 1077, Civ. C. 1895; re-en. Sec. 4428, Rev. C. 1907; re-en. Sec. 6670, R.C.M. 1921; Cal. Civ. C. Sec. 661; re-en. Sec. 6670, R.C.M. 1935; R.C.M. 1947, 67-210.

70-15-105. Incident or appurtenance defined. A thing is deemed to be incidental or appurtenant to land when it is by right used with the land for its benefit, as in the case of a way or watercourse or of a passage for light, air, or heat from or across the land of another.

History: En. Sec. 1078, Civ. C. 1895; re-en. Sec. 4429, Rev. C. 1907; re-en. Sec. 6671, R.C.M. 1921; Cal. Civ. C. Sec. 662; Field Civ. C. Sec. 166; re-en. Sec. 6671, R.C.M. 1935; R.C.M. 1947, 67-211.

Part 2

Classification of Interests in Real Property

70-15-201. Application of classifications. The names and classification of interests in real property have only such application to interests in personal property as is in this code expressly provided.

History: En. Sec. 1123, Civ. C. 1895; re-en. Sec. 4456, Rev. C. 1907; re-en. Sec. 6698, R.C.M. 1921; Cal. Civ. C. Sec. 702; Field Civ. C. Sec. 194; re-en. Sec. 6698, R.C.M. 1935; R.C.M. 1947, 67-328.

70-15-202. Enumeration of estates. Estates in real property, in respect to the duration of their enjoyment, are either:
(1) estates of inheritance or perpetual estates;
(2) estates for life;
(3) estates for years;
(4) estates from year to year, quarter to quarter, month to month, week to week, day to day, and for other indefinite and unascertained durations of enjoyment whatsoever, except estates or tenancies at will; or
(5) estates at will.

History: En. Sec. 1210, Civ. C. 1895; re-en. Sec. 4481, Rev. C. 1907; re-en. Sec. 6723, R.C.M. 1921; Cal. Civ. C. Sec. 761; Field Civ. C. Sec. 218; amd. Sec. 1, Ch. 48, L. 1931; re-en. Sec. 6723, R.C.M. 1935; R.C.M. 1947, 67-502.

70-15-203. Fee simple. Every estate of inheritance is a fee, and such estate, when not defeasible or conditional, is a fee simple or an absolute fee.

History: En. Sec. 1211, Civ. C. 1895; re-en. Sec. 4482, Rev. C. 1907; re-en. Sec. 6724, R.C.M. 1921; Cal. Civ. C. Sec. 762; Based on Field Civ. Sec. 219; re-en. Sec. 6724, R.C.M. 1935; R.C.M. 1947, 67-503.

70-15-204. Estates tail abolished — considered fee simple. Estates tail are abolished, and every estate which would be at common law adjudged to be a fee tail is a fee simple and, if no valid remainder is limited thereon, is a fee simple absolute.

History: En. Sec. 1212, Civ. C. 1895; re-en. Sec. 4483, Rev. C. 1907; re-en. Sec. 6725, R.C.M. 1921; Cal. Civ. C. Sec. 763; Based on Field Civ. C. Sec. 220; re-en. Sec. 6725, R.C.M. 1935; R.C.M. 1947, 67-504.

70-15-205. Remainder limited upon fee tail valid — vesting. Where a remainder in fee is limited upon any estate which would by the common law be adjudged a fee tail, such remainder is valid as a contingent limitation upon a fee and vests in possession on the death of the first taker without issue living at the time of his death.

History: En. Sec. 1213, Civ. C. 1895; re-en. Sec. 4484, Rev. C. 1907; re-en. Sec. 6726, R.C.M. 1921; Cal. Civ. C. Sec. 764; Based on Field Civ. C. Sec. 221; re-en. Sec. 6726, R.C.M. 1935; R.C.M. 1947, 67-505.

70-15-206. Freehold estates — chattels real — chattel interests. Estates of inheritance and for life are called estates of freehold; estates for years and estates embraced by the provisions of 70-15-202(4) are chattels real; and estates at will are chattel interests but are not liable as such to sale on execution.

History: En. Sec. 1214, Civ. C. 1895; re-en. Sec. 4485, Rev. C. 1907; re-en. Sec. 6727, R.C.M. 1921; Cal. Civ. C. Sec. 765; Field Civ. C. Sec. 222; amd. Sec. 1, Ch. 49, L. 1931; re-en. Sec. 6727, R.C.M. 1935; R.C.M. 1947, 67-506.

70-15-207. Estate for life of third person — freehold. An estate during the life of a third person, whether limited to heirs or otherwise, is a freehold.

History: En. Sec. 1215, Civ. C. 1895; re-en. Sec. 4486, Rev. C. 1907; re-en. Sec. 6728, R.C.M. 1921; Cal. Civ. C. Sec. 766; re-en. Sec. 6728, R.C.M. 1935; R.C.M. 1947, 67-507.

70-15-208. Term of years — suspension of absolute ownership. The absolute ownership of a term of years cannot be suspended for a longer period than the absolute power of alienation can be suspended in respect to a fee.

History: En. Sec. 1219, Civ. C. 1895; re-en. Sec. 4490, Rev. C. 1907; re-en. Sec. 6732, R.C.M. 1921; Cal. Civ. C. Sec. 770; re-en. Sec. 6732, R.C.M. 1935; R.C.M. 1947, 67-511.

70-15-209. Future estate — right of possession at future day. A future estate may be limited by the act of the party to commence in possession at a future day, either without the intervention of a precedent estate or on the termination by lapse of time or otherwise of a precedent estate created at the same time.

History: En. Sec. 1216, Civ. C. 1895; re-en. Sec. 4487, Rev. C. 1907; re-en. Sec. 6729, R.C.M. 1921; Cal. Civ. C. Sec. 767; Field Civ. C. Sec. 224; re-en. Sec. 6729, R.C.M. 1935; R.C.M. 1947, 67-508.

70-15-210. Reversion. A reversion is the residue of an estate left by operation of law in the grantor or his successors or in the successors of a testator, commencing in possession on the determination of a particular estate granted or devised.

History: En. Sec. 1217, Civ. C. 1895; re-en. Sec. 4488, Rev. C. 1907; re-en. Sec. 6730, R.C.M. 1921; Cal. Civ. C. Sec. 768; Field Civ. C. Sec. 225; re-en. Sec. 6730, R.C.M. 1935; R.C.M. 1947, 67-509.

70-15-211. Remainder. When a future estate, other than a reversion, is dependent on a precedent estate, it may be called a remainder and may be created and transferred by that name.

History: En. Sec. 1218, Civ. C. 1895; re-en. Sec. 4489, Rev. C. 1907; re-en. Sec. 6731, R.C.M. 1921; Cal. Civ. C. Sec. 769; Field Civ. C. Sec. 226; re-en. Sec. 6731, R.C.M. 1935; R.C.M. 1947, 67-510.

70-15-212. Future and contingent estates — how created. Subject to the rules of parts 1, 3, and 4 of chapter 1, parts 1 and 2 of this chapter, and part 1 of chapter 17:

(1) a freehold estate, as well as a chattel real, may be created to commence at a future day;

(2) an estate for life may be created in a term of years and a remainder limited thereon;

(3) a remainder of a freehold or chattel real, either contingent or vested, may be created, expectant on the determination of a term of years; and

(4) a fee may be limited on a fee upon a contingency which, if it should occur, must happen within the period prescribed in this code.

History: En. Sec. 1222, Civ. C. 1895; re-en. Sec. 4493, Rev. C. 1907; re-en. Sec. 6735, R.C.M. 1921; Cal. Civ. C. Sec. 773; Field Civ. C. Sec. 230; re-en. Sec. 6735, R.C.M. 1935; R.C.M. 1947, 67-514.

70-15-213. Remainder upon a contingency. A remainder may be limited on a contingency which, in case it should happen, will operate to abridge or determine the precedent estate, and every such remainder is to be deemed a conditional limitation.

History: En. Sec. 1227, Civ. C. 1895; re-en. Sec. 4498, Rev. C. 1907; re-en. Sec. 6740, R.C.M. 1921; Cal. Civ. C. Sec. 778; Field Civ. C. Sec. 236; re-en. Sec. 6740, R.C.M. 1935; R.C.M. 1947, 67-519.

70-15-214. Remainder not upon a contingency — when to take effect. When a remainder of an estate for life or for years is not limited on a contingency defeating or avoiding such precedent estate, it is to be deemed intended to take effect only on the death of the first taker or the expiration by lapse of time of such term of years.

History: En. Sec. 1229, Civ. C. 1895; re-en. Sec. 4500, Rev. C. 1907; re-en. Sec. 6742, R.C.M. 1921; Cal. Civ. C. Sec. 780; Field Civ. C. Sec. 238; re-en. Sec. 6742, R.C.M. 1935; R.C.M. 1947, 67-521.

70-15-215. Remainder to heirs of tenant for life — effect of. When a remainder is limited to the heirs or heirs of the body of a person to whom a life estate in the same property is given, the persons who on the termination of the life estate are the successors or heirs of the body of the owner for life are entitled to take by virtue of the remainder so limited to them and not as mere successors of the owner for life.

History: En. Sec. 1228, Civ. C. 1895; re-en. Sec. 4499, Rev. C. 1907; re-en. Sec. 6741, R.C.M. 1921; Cal. Civ. C. Sec. 779; Field Civ. C. Sec. 237; re-en. Sec. 6741, R.C.M. 1935; R.C.M. 1947, 67-520.

70-15-216. When vesting of future estate not prevented by power of appointment. A general or special power of appointment does not prevent the vesting of a future estate limited to take effect in case such power is not executed.

History: En. Sec. 1230, Civ. C. 1895; re-en. Sec. 4501, Rev. C. 1907; re-en. Sec. 6743, R.C.M. 1921; Cal. Civ. C. Sec. 781; Field Civ. C. Sec. 239; re-en. Sec. 6743, R.C.M. 1935; R.C.M. 1947, 67-522.

Part 3

Powers

70-15-301. Power defined. A "power", as the term is used in this part, is an authority to do some act in relation to real property or to the creation or revocation of an estate therein or a charge thereon, which the owner granting or reserving such power might himself perform for any purpose.

History: En. Sec. 1330, Civ. C. 1895; re-en. Sec. 4551, Rev. C. 1907; re-en. Sec. 6798, R.C.M. 1921; Field Civ. C. Sec. 302; re-en. Sec. 6798, R.C.M. 1935; R.C.M. 1947, 67-901.

70-15-302. Who may not execute power. A power cannot be executed by any person not capable of disposing of real property.

History: En. Sec. 1331, Civ. C. 1895; re-en. Sec. 4552, Rev. C. 1907; re-en. Sec. 6799, R.C.M. 1921; Field Civ. C. Sec. 319; re-en. Sec. 6799, R.C.M. 1935; R.C.M. 1947, 67-902.

70-15-303. Married persons — execution. (1) A married person may execute a power during marriage without the concurrence of the spouse unless otherwise prescribed by the terms of the power.

(2) No power can be executed by a married woman before she attains her majority which could not be executed by a married man before he attains his majority.

History: (1)En. Sec. 1332, Civ. C. 1895; re-en. Sec. 4553, Rev. C. 1907; re-en. Sec. 6800, R.C.M. 1921; Field Civ. C. Sec. 320; re-en. Sec. 6800, R.C.M. 1935; amd. Sec. 31, Ch. 535, L. 1975; Sec. 67-903, R.C.M. 1947; (2)En. Sec. 1333, Civ. C. 1895; re-en. Sec. 4554, Rev. C. 1907; re-en. Sec. 6801, R.C.M. 1921; Based on Field Civ. C. Sec. 321; re-en. Sec. 6801, R.C.M. 1935; amd. Sec. 32, Ch. 535, L. 1975; Sec. 67-904, R.C.M. 1947; R.C.M. 1947, 67-903, 67-904.

70-15-304. Power — how executed. A power can be executed only by a written instrument which would be sufficient to pass the estate or interest intended to pass under the power if the person executing the power were the actual owner.

History: En. Sec. 1334, Civ. C. 1895; re-en. Sec. 4555, Rev. C. 1907; re-en. Sec. 6802, R.C.M. 1921; Field Civ. C. Sec. 322; re-en. Sec. 6802, R.C.M. 1935; R.C.M. 1947, 67-905.

CHAPTER 16

RIGHTS AND OBLIGATIONS INCIDENTAL TO OWNERSHIP IN REAL PROPERTY

Part 1 — General Provisions

Section
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Part 1

General Provisions

70-16-101. Rights of owner in fee — above and below surface. The owner of land in fee has the right to the surface and to everything permanently situated beneath or above it.

History: En. Sec. 1290, Civ. C. 1895; re-en. Sec. 4528, Rev. C. 1907; re-en. Sec. 6770, R.C.M. 1921; Cal. Civ. C. Sec. 829; Field Civ. C. Sec. 266; re-en. Sec. 6770, R.C.M. 1935; R.C.M. 1947, 67-711.

70-16-102. Rights of life tenant. The owner of a life estate may use the land in the same manner as the owner of a fee simple, except that he must do no act to the injury of the inheritance.

History: En. Sec. 1270, Civ. C. 1895; re-en. Sec. 4518, Rev. C. 1907; re-en. Sec. 6760, R.C.M. 1921; Cal. C. Sec. 818; Field Civ. C. Sec. 257; re-en. Sec. 6760, R.C.M. 1935; R.C.M. 1947, 67-701.

70-16-103. Duties of life tenant. The owner of a life estate must keep the buildings and fences in repair from ordinary waste and must pay the taxes and other annual charges and a just proportion of extraordinary assessments benefiting the whole inheritance.

History: En. Sec. 1300, Civ. C. 1895; re-en. Sec. 4534, Rev. C. 1907; re-en. Sec. 6776, R.C.M. 1921; Cal. Civ. C. Sec. 840; Field Civ. C. Sec. 272; re-en. Sec. 6776, R.C.M. 1935; R.C.M. 1947, 67-801.

70-16-104. Rights of tenant for years or at will. (1) A tenant for years or at will, unless he is a wrongdoer by holding over, may occupy the buildings, take the annual products of the soil, and work mines and quarries open at the commencement of his tenancy; and a tenant at will or for an indefinite term may cultivate and harvest the crops growing at the end of his tenancy.

(2) A tenant for years or at will has no other rights to the property than those given to him by the agreement or instrument by which his tenancy is acquired or by subsection (1).

(3) Subsection (2) does not apply to arrangements governed by chapter 24 of this title.

History: (1)En. Sec. 1271, Civ. C. 1895; re-en. Sec. 4519, Rev. C. 1907; re-en. Sec. 6761, R.C.M. 1921; Cal. Civ. C. Sec. 819; Based on Field Civ. C. Sec. 258; re-en. Sec. 6761, R.C.M. 1935; Sec. 67-702, R.C.M. 1947; (2)En. Sec. 1272, Civ. C. 1895; re-en. Sec. 4520, Rev. C. 1907; re-en. Sec. 6762, R.C.M. 1921; Cal. Civ. C. Sec. 820; Field Civ. C. Sec. 259; re-en. Sec. 6762, R.C.M. 1935; Sec. 67-703, R.C.M. 1947; R.C.M. 1947, 67-702, 67-703; (3)En. Sec. 5, Ch. 115, L. 1979.

70-16-105. Remedy of remainderman or reversioner. A person having an estate in fee, in remainder or reversion, may maintain an action for any injury done to the inheritance, notwithstanding an intervening estate for life or years and although, after its commission, his estate is transferred and he has no interest in the property at the commencement of the action.

History: En. Sec. 1278, Civ. C. 1895; re-en. Sec. 4526, Rev. C. 1907; re-en. Sec. 6768, R.C.M. 1921; Cal. Civ. C. Sec. 826; Field Civ. C. Sec. 265; re-en. Sec. 6768, R.C.M. 1935; R.C.M. 1947, 67-709.

70-16-106. Action for waste — treble damages. If a guardian, tenant for life or years, joint tenant, or tenant in common of real property commits waste thereon, any person aggrieved by the waste may bring an action against him therefor, in which action there may be judgment for treble damages.

History: En. Sec. 229, p. 91, Bannack Stat.; re-en. Sec. 250, p. 187, L. 1867; re-en. Sec. 299, p. 93, Cod. Stat. 1871; re-en. Sec. 350, p. 137, L. 1877; re-en. Sec. 350, 1st Div. Rev. Stat. 1879; re-en. Sec. 362, 1st Div. Comp. Stat. 1887; re-en. Sec. 1301, C. Civ. Proc. 1895; re-en. Sec. 6866, Rev. C. 1907; re-en. Sec. 9475, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 732; re-en. Sec. 9475, R.C.M. 1935; R.C.M. 1947, 93-6102.

70-16-107. Trespass for taking timber. (1) Any person who cuts down or carries off any wood or underwood, tree, or timber or girdles or otherwise injures any tree or timber on the land of another person or on the street or highway in front of any person's house, village or city lot, or cultivated grounds or on the commons or public grounds of any city or town or on the street or highway in front thereof, without lawful authority, is liable to the owner of such land or to such city or town for treble the amount of damages which may be assessed therefor in a civil action in any court having jurisdiction.

(2) Nothing in subsection (1) authorizes the recovery of more than the just value of the timber taken from uncultivated woodland for the repair of a public highway or bridge upon the land or adjoining it.

History: (1)En. Sec. 230, p. 91, Bannack Stat.; re-en. Sec. 251, p. 187, L. 1867; re-en. Sec. 300, p. 93, Cod. Stat. 1871; re-en. Sec. 351, p. 137, L. 1877; re-en. Sec. 351, 1st Div. Rev. Stat. 1879; re-en. Sec. 363, 1st Div. Comp. Stat. 1887; re-en. Sec. 1302, C. Civ. Proc. 1895; re-en. Sec. 6867, Rev. C. 1907; re-en. Sec. 9476, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 733; re-en. Sec. 9476, R.C.M. 1935; Sec.

93-6103, R.C.M. 1947; (2)En. Sec. 231, p. 91, Bannack Stat.; re-en. Sec. 252, p. 187, L. 1867; re-en. Sec. 301, p. 93, Cod. Stat. 1871; re-en. Sec. 352, p. 137, L. 1877; re-en. Sec. 352, 1st Div. Rev. Stat. 1879; re-en. Sec. 364, 1st Div. Comp. Stat. 1887; re-en. Sec. 1303, C. Civ. Proc. 1895; re-en. Sec. 6868, Rev. C. 1907; re-en. Sec. 9477, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 734; re-en. Sec. 9477, R.C.M. 1935; Sec. 93-6104, R.C.M. 1947; R.C.M. 1947, 93-6103, 93-6104.

70-16-108. Injury to timber — exceptions as to treble damages. For wrongful injuries to timber, trees, or underwood upon the land of another or removal thereof, the measure of damage is three times such a sum as would compensate for the actual detriment, except where the trespass was casual and involuntary or committed under the belief that the land belonged to the trespasser or where the wood was taken by the authority of highway officers for the purposes of a highway, in which cases the damages are a sum equal to the actual detriment.

History: En. Sec. 4352, Civ. C. 1895; re-en. Sec. 6078, Rev. C. 1907; re-en. Sec. 8696, R.C.M. 1921; Cal. Civ. C. Sec. 3346; Field. Civ. C. Sec. 1871; re-en. Sec. 8696, R.C.M. 1935; R.C.M. 1947, 17-503.

70-16-109. Summary proceedings for possession — where provisions found. Summary proceedings for obtaining possession of real property forcibly entered or forcibly and unlawfully detained are provided for in chapter 27.

History: En. Sec. 1243, Civ. C. 1895; re-en. Sec. 4505, Rev. C. 1907; re-en. Sec. 6747, R.C.M. 1921; Cal. Civ. C. Sec. 792; re-en. Sec. 6747, R.C.M. 1935; R.C.M. 1947, 67-526.

Part 2

Adjoining Landowners and Boundaries — Fences

70-16-201. Owner of land bounded by water. Except where the grant under which the land is held indicates a different intent, the owner of the land, when it borders upon a navigable lake or stream, takes to the edge of the lake or stream at low-water mark; when it borders upon any other water, the owner takes to the middle of the lake or stream.

History: En. Sec. 1291, Civ. C. 1895; re-en. Sec. 4529, Rev. C. 1907; re-en. Sec. 6771, R.C.M. 1921; Cal. Civ. C. Sec. 830; Based on Field Civ. C. Sec. 267; re-en. Sec. 6771, R.C.M. 1935; R.C.M. 1947, 67-712.

70-16-202. Owner of land bounded by road. An owner of land bounded by a road or street is presumed to own to the center thereof, but the contrary may be shown.

History: En. Sec. 1292, Civ. C. 1895; re-en. Sec. 4530, Rev. C. 1907; re-en. Sec. 6772, R.C.M. 1921; Cal. Civ. C. Sec. 831; Field Civ. C. Sec. 268; re-en. Sec. 6772, R.C.M. 1935; R.C.M. 1947, 67-713.

70-16-203. Adjoining owner's right to lateral and subjacent support — excavations. Each coterminous owner is entitled to the lateral and subjacent support which his land receives from the adjoining land, subject to the right of the owner of the adjoining land to make proper and usual excavations on the same for the purposes of construction, on using ordinary care and skill and taking reasonable precautions to sustain the land of the other and giving previous reasonable notice to the other of his intention to make such excavations.

History: En. Sec. 1293, Civ. C. 1895; re-en. Sec. 4531, Rev. C. 1907; re-en. Sec. 6773, R.C.M. 1921; Cal. Civ. C. Sec. 832; Based on Field Civ. C. Sec. 269; re-en. Sec. 6773, R.C.M. 1935; R.C.M. 1947, 67-714.

70-16-204. Trees on or near boundary. (1) Trees whose trunks stand partly on the land of two or more coterminous owners belong to them in common.

(2) Trees whose trunks stand wholly upon the land of one owner belong exclusively to him, although their roots grow into the land of another.

History: En. Secs. 1294, 1295, Civ. C. 1895; re-en. Secs. 4532, 4533, Rev. C. 1907; re-en. Secs. 6774, 6775, R.C.M. 1921; Cal. Civ. C. Secs. 833, 834; Field Civ. C. Secs. 270, 271; re-en. Secs. 6774, 6775, R.C.M. 1935; R.C.M. 1947, 67-715, 67-716.

70-16-205. Monuments and fences — mutual obligation of adjoining owners. Coterminous owners are mutually bound equally to maintain:

(1) the boundaries and monuments between them;

(2) the fences between them, unless one of them chooses to let his land lie without fencing, in which case if he afterwards encloses it, he must refund to the other a just proportion of the value, at that time, of any division fence made by the latter. However, using land for grazing or pasturage of any kind whatsoever shall be deemed a usage of said land, and such land shall not be considered as lying idle under the provisions of this section.

History: En. Sec. 1301, Civ. C. 1895; re-en. Sec. 4535, Rev. C. 1907; amd. Sec. 1, Ch. 132, L. 1917; re-en. Sec. 6777, R.C.M. 1921; Cal. Civ. C. Sec. 841; Based on Field Civ. C. Sec. 273; re-en. Sec. 6777, R.C.M. 1935; R.C.M. 1947, 67-802.

70-16-206. Partition fences required — adjoining lands previously enclosed. The occupants of adjoining lands enclosed with fences must build and maintain partition fences between their own and the next adjoining enclosure in equal shares so long as both continue to enclose the same, and such partition fence must be kept in good repair throughout the year unless the occupants otherwise mutually agree.

History: En. Sec. 1114, 5th Div. Comp. Stat. 1887; amd. Sec. 3253, Pol. C. 1895; re-en. Sec. 2085, Rev. C. 1907; re-en. Sec. 6778, R.C.M. 1921; re-en. Sec. 6778, R.C.M. 1935; R.C.M. 1947, 67-803.

70-16-207. Occupant of land adjoining enclosure of another — when required to share expense of partition fence. If any occupant of land adjoining the enclosure of another enclose the same, upon the enclosure of such other person, he must within 3 months thereafter build his proportion of such partition fence or refund to the owner thereof an equal proportion of the value, at that time, of any partition fence of such adjoining occupant.

History: En. Sec. 1115, 5th Div. Comp. Stat. 1887; re-en. Sec. 3254, Pol. C. 1895; re-en. Sec. 2086, Rev. C. 1907; re-en. Sec. 6779, R.C.M. 1921; re-en. Sec. 6779, R.C.M. 1935; R.C.M. 1947, 67-804.

70-16-208. Partition fence when common occupancy ceases. Whenever any lands belonging to different persons in severalty have been enclosed and occupied in common or without a partition fence between them and one of such occupants desires to occupy his part in severalty, the other occupant must, within 6 months after being notified in writing, build and maintain his proportion of such partition fence as may be necessary for that purpose, and in case of neglect or refusal so to do, the person giving such notice may build such fence at the expense of the person so neglecting or refusing, the amount expended to be recovered in an action, together with all damages he may sustain on account of such neglect or refusal.

History: **En. Sec. 1116, 5th Div. Comp. Stat. 1887; re-en. Sec. 3255, Pol. C. 1895; re-en. Sec. 2087, Rev. C. 1907; re-en. Sec. 6780, R.C.M. 1921; re-en. Sec. 6780, R.C.M. 1935; R.C.M. 1947, 67-805.**

70-16-209. Repair or rebuilding of partition fences. In case any person neglects or refuses to repair or rebuild any partition fence which by law he ought to build or maintain, the occupant of the adjoining land may, after giving 60 days' notice that a new fence should be erected or 5 days' notice in writing that the repairing of such fence is necessary, build or repair such fence at the expense of the party so neglecting or refusing, the amount so expended to be recovered from him; and the party so neglecting or refusing, after receipt by him of the notice above provided, is liable to the party injured for all damages he may sustain thereby.

History: **En. Sec. 1118, 5th Div. Comp. Stat. 1887; re-en. Sec. 3257, Pol. C. 1895; re-en. Sec. 2089, Rev. C. 1907; re-en. Sec. 6782, R.C.M. 1921; re-en. Sec. 6782, R.C.M. 1935; R.C.M. 1947, 67-807.**

70-16-210. Removal of partition fence. If the occupants of adjoining lands build their respective portions of a partition fence and either of them at any time desires to suffer the land occupied by him to lie open, he may, after having given to the occupants of the adjoining land at least 6 months' notice of his intention so to do, remove his proportion of the partition fence unless such adjoining occupant pays or tenders to him the value thereof. If such fence be removed without notice or after payment or tender of the value as aforesaid, the person removing the same is liable to the person injured for all damages he may sustain thereby.

History: **En. Sec. 1117, 5th Div. Comp. Stat. 1887; re-en. Sec. 3256, Pol. C. 1895; re-en. Sec. 2088, Rev. C. 1907; re-en. Sec. 6781, R.C.M. 1921; re-en. Sec. 6781, R.C.M. 1935; R.C.M. 1947, 67-806.**

Part 3

Gratuitous Licensee for Recreation

70-16-301. Recreational purposes defined. "Recreational purposes", as used herein, shall include hunting, fishing, swimming, boating, water skiing, camping, picnicking, pleasure driving, winter sports, hiking, or other pleasure expeditions.

History: **En. Sec. 2, Ch. 138, L. 1965; R.C.M. 1947, 67-809.**

70-16-302. Restriction on liability to licensee. A landowner or tenant who permits, by act or implication, any person to enter upon any property in the possession or under the control of such landowner or tenant for any recreational purpose without accepting a valuable consideration therefor does not by granting such permission extend any assurance that such property is safe for any purpose or confer upon such a person the status of invitee or licensee to whom any duty of care is owed, and such landowner or tenant shall not be liable to such person for any injury to person or property resulting from any act or omission of such landowner or tenant unless such act or omission constitutes willful or wanton misconduct.

History: **En. Sec. 1, Ch. 138, L. 1965; R.C.M. 1947, 67-808.**

Part 4

Right of Reentry

70-16-401. Reentry — when and how to be made. Whenever the right of reentry is given to the grantor or lessor in any grant or lease or otherwise, such reentry may be made at any time after the right has accrued, upon 3 days' notice, as provided in chapter 27.

History: **En. Sec. 1242, Civ. C. 1895; re-en. Sec. 4504, Rev. C. 1907; re-en. Sec. 6746, R.C.M. 1921; Cal. Civ. C. Sec. 791; Based on Field Civ. C. Sec. 243; re-en. Sec. 6746, R.C.M. 1935; R.C.M. 1947, 67-525.**

70-16-402. Action for possession under right of reentry — notice not required. An action for the possession of real property leased or granted with a right of reentry may be maintained at any time in the district court, after the right to reenter has accrued, without the notice prescribed in 70-16-401.

History: **En. Sec. 1244, Civ. C. 1895; re-en. Sec. 4506, Rev. C. 1907; re-en. Sec. 6748, R.C.M. 1921; Cal. Civ. C. Sec. 793; Field Civ. C. Sec. 244; re-en. Sec. 6748, R.C.M. 1935; R.C.M. 1947, 67-527.**

CHAPTER 17

SERVITUDES, EASEMENTS, AND COVENANTS RUNNING WITH THE LAND

Part 1 — Servitudes—Easements

Section
70-17-101. Servitudes attached to land.
70-17-102. Servitudes not attached to land.
70-17-103. Dominant and servient tenement.
70-17-104. Who may grant servitude.
70-17-105. Who may not hold servitude.
70-17-106. Extent of servitude.
70-17-107. Apportionment of burden upon partition of dominant tenement.
70-17-108. Rights of owner of future estate in dominant tenement.
70-17-109. Who may bring action to enforce easement.
70-17-110. Action by owner of servient tenement for possession.
70-17-111. How servitude extinguished.
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Part 2 — Covenants Running With the Land

70-17-201. Nature and effect.
70-17-202. Convenants specified in this part as exclusive.
70-17-203. What convenants run with the land.
70-17-204. Who bound by convenant.
70-17-205. Nonliability for prior or subsequent breach.
70-17-206. Apportionment of burdens and benefits.

Part 3 — Solar Easements

70-17-301. Creation of solar easements.
70-17-302. Content of solar easements.

Part 1

Servitudes — Easements

70-17-101. Servitudes attached to land. The following land burdens or servitudes upon land may be attached to other land as incidents or appurtenances and are then called easements:

(1) the right of pasture;
(2) the right of fishing;
(3) the right of taking game;
(4) the right-of-way;
(5) the right of taking water, wood, minerals, and other things;
(6) the right of transacting business upon land;
(7) the right of conducting lawful sports upon land;
(8) the right of receiving air, light, or heat from or over or discharging the same upon or over land;
(9) the right of receiving water from or discharging the same upon land;
(10) the right of flooding land;
(11) the right of having water flow without diminution or disturbance of any kind;
(12) the right of using a wall as a party wall;
(13) the right of receiving more than natural support from adjacent land or things affixed thereto;
(14) the right of having the whole of a division fence maintained by a coterminous owner;
(15) the right of having public conveyances stopped or of stopping the same on land;
(16) the right of a seat in church;
(17) the right of burial;
(18) the right of conserving open space to preserve park, recreational, historic, aesthetic, cultural, and natural values on or related to land.

History: En. Sec. 1250, Civ. C. 1895; re-en. Sec. 4507, Rev. C. 1907; re-en. Sec. 6749, R.C.M. 1921; Cal. Civ. C. Sec. 801; Field Civ. C. Sec. 245; re-en. Sec. 6749, R.C.M. 1935; amd. Sec. 16, Ch. 489, L. 1975; R.C.M. 1947, 67-601.

70-17-102. Servitudes not attached to land. The following land burdens or servitudes upon land may be granted and held though not attached to land:

(1) the right of pasture and of fishing and taking game;
(2) the right of a seat in church;
(3) the right of burial;
(4) the right of taking rents and tolls;
(5) the right-of-way;
(6) the right of taking water, wood, minerals, or other things;

(7) the right of conserving open space to preserve park, recreational, historic, aesthetic, cultural, and natural values on or related to land.

History: En. Sec. 1251, Civ. C. 1895; re-en. Sec. 4508, Rev. C. 1907; re-en. Sec. 6750, R.C.M. 1921; Cal. Civ. C. Sec. 802; Based on Field Civ. C. Sec. 246; re-en. Sec. 6750, R.C.M. 1935; amd. Sec. 17, Ch. 489, L. 1975; R.C.M. 1947, 67-602.

70-17-103. Dominant and servient tenement. The land to which an easement is attached is called the dominant tenement. The land upon which a burden or servitude is held is called the servient tenement.

History: En. Sec. 1252, Civ. C. 1895; re-en. Sec. 4509, Rev. C. 1907; re-en. Sec. 6751, R.C.M. 1921; Cal. Civ. C. Sec. 803; Field Civ. C. Sec. 247; re-en. Sec. 6751, R.C.M. 1935; R.C.M. 1947, 67-603.

70-17-104. Who may grant servitude. A servitude can be created only by one who has a vested estate in the servient tenement.

History: En. Sec. 1253, Civ. C. 1895; re-en. Sec. 4510, Rev. C. 1907; re-en. Sec. 6752, R.C.M. 1921; Cal. Civ. C. Sec. 804; Field Civ. C. Sec. 248; re-en. Sec. 6752, R.C.M. 1935; R.C.M. 1947, 67-604.

70-17-105. Who may not hold servitude. A servitude thereon cannot be held by the owner of the servient tenement.

History: En. Sec. 1254, Civ. C. 1895; re-en. Sec. 4511, Rev. C. 1907; re-en. Sec. 6753, R.C.M. 1921; Cal. Civ. C. Sec. 805; Field Civ. C. Sec. 249; re-en. Sec. 6753, R.C.M. 1935; R.C.M. 1947, 67-605.

70-17-106. Extent of servitude. The extent of a servitude is determined by the terms of the grant or the nature of the enjoyment by which it was acquired.

History: En. Sec. 1255, Civ. C. 1895; re-en. Sec. 4512, Rev. C. 1907; re-en. Sec. 6754, R.C.M. 1921; Cal. Civ. C. Sec. 806; Field Civ. C. Sec. 250; re-en. Sec. 6754, R.C.M. 1935; R.C.M. 1947, 67-606.

70-17-107. Apportionment of burden upon partition of dominant tenement. In case of partition of the dominant tenement, the burden must be apportioned according to the division of the dominant tenement but not in such a way as to increase the burden upon the servient tenement.

History: En. Sec. 1256, Civ. C. 1895; re-en. Sec. 4513, Rev. C. 1907; re-en. Sec. 6755, R.C.M. 1921; Cal. Civ. C. Sec. 807; Field Civ. C. Sec. 251; re-en. Sec. 6755, R.C.M. 1935; R.C.M. 1947, 67-607.

70-17-108. Rights of owner of future estate in dominant tenement. The owner of a future estate in a dominant tenement may use easements attached thereto for the purpose of viewing waste, demanding rent, or removing an obstruction to the enjoyment of such easements although such tenement is occupied by a tenant.

History: En. Sec. 1257, Civ. C. 1895; re-en. Sec. 4514, Rev. C. 1907; re-en. Sec. 6756, R.C.M. 1921; Cal. Civ. C. Sec. 808; Field Civ. C. Sec. 252; re-en. Sec. 6756, R.C.M. 1935; R.C.M. 1947, 67-608.

70-17-109. Who may bring action to enforce easement. The owner of any estate in a dominant tenement or the occupant of such tenement may maintain an action for the enforcement of an easement attached thereto.

History: En. Sec. 1258, Civ. C. 1895; re-en. Sec. 4515, Rev. C. 1907; re-en. Sec. 6757, R.C.M. 1921; Cal. Civ. C. Sec. 809; Field Civ. C. Sec. 253; re-en. Sec. 6757, R.C.M. 1935; Sec. 67-609, R.C.M. 1947; redes. 62-617 by Sec. 15, Ch. 489, L. 1975; R.C.M. 1947, 62-617.

70-17-110. Action by owner of servient tenement for possession. The owner in fee of a servient tenement may maintain an action for the possession of the land against any one unlawfully possessed thereof though a servitude exists thereon in favor of the public.

History: **En. Sec. 1259, Civ. C. 1895; re-en. Sec. 4516, Rev. C. 1907; re-en. Sec. 6758, R.C.M. 1921; Cal. Civ. C. Sec. 810; Field Civ. C. Sec. 254; re-en. Sec. 6758, R.C.M. 1935; R.C.M. 1947, 67-610.**

70-17-111. How servitude extinguished. A servitude is extinguished:

(1) by the vesting of the right to the servitude and the right to the servient tenement in the same person;

(2) by the destruction of the servient tenement;

(3) by the performance of any act upon either tenement by the owner of the servitude or with his assent which is incompatible with its nature or exercise; or

(4) when the servitude was acquired by enjoyment, by disuse thereof by the owner of the servitude for the period prescribed for acquiring title by enjoyment.

History: **En. Sec. 1260, Civ. C. 1895; re-en. Sec. 4517, Rev. C. 1907; re-en. Sec. 6759, R.C.M. 1921; Cal. Civ. C. Sec. 811; Field Civ. C. Sec. 255; re-en. Sec. 6759, R.C.M. 1935; R.C.M. 1947, 67-611.**

70-17-112. Interference with canal or ditch easements prohibited. (1) A person with a canal or ditch easement has a secondary easement to enter, inspect, repair, and maintain a canal or ditch.

(2) No person may encroach upon or otherwise impair any easement for a canal or ditch used for irrigation or any other lawful domestic or commercial purpose, including carrying return water.

(3) The provisions of subsection (2) do not apply if the holder of the canal or ditch easement consents in writing to the encroachment or impairment.

(4) Each canal or ditch easement obtained by prescription or conveyance is included within the scope of this section. Nothing in this section establishes a secondary easement where none existed prior to April 14, 1981. This section does not affect contracts or agreements concluded prior to April 14, 1981.

(5) If a legal action is brought to enforce the provisions of this section, the prevailing party is entitled to costs and reasonable attorney's fees.

History: **En. Sec. 1, Ch. 371, L. 1981.**

Compiler's Comments

1981 Title: The title to HB 596 (Ch. 371, L. 1981) read: "An act to recognize a secondary easement for entry to and maintenance of a canal or ditch; to prohibit encroachments upon or impairment of easements for canals or ditches used for irrigation or any other lawful domestic or commercial purpose, including carrying return water; to provide for the payment of costs and attorney's fees to the prevailing party in actions under this act; and providing an effective date."

Effective Date: Section 2, Ch. 371, L. 1981, provided: "This act is effective on passage and approval." Approved April 14, 1981.

Cross-References

Obstruction as nuisance, 27-30-101.

Part 2

Covenants Running With the Land

70-17-201. Nature and effect. Certain covenants contained in grants of estates in real property are appurtenant to such estates and pass with them so as to bind the assigns of the covenantor and to vest in the assigns of the covenantee in the same manner as if they had personally entered into them. Such covenants are said to run with the land.

History: En. Sec. 1983, Civ. C. 1895; re-en. Sec. 4914, Rev. C. 1907; re-en. Sec. 7416, R.C.M. 1921; Cal. Civ. C. Sec. 1460; Field Civ. C. Sec. 691; re-en. Sec. 7416, R.C.M. 1935; R.C.M. 1947, 58-304.

70-17-202. Covenants specified in this part as exclusive. The only covenants which run with the land are those specified in this part and those which are incidental thereto.

History: En. Sec. 1984, Civ. C. 1895; re-en. Sec. 4915, Rev. C. 1907; re-en. Sec. 7417, R.C.M. 1921; Cal. Civ. C. Sec. 1461; Field Civ. C. Sec. 692; re-en. Sec. 7417, R.C.M. 1935; R.C.M. 1947, 58-305.

70-17-203. What convenants run with the land. (1) Every covenant contained in a grant of an estate in real property, which is made for the direct benefit of the property or some part of it then in existence, runs with the land.

(2) Subsection (1) includes covenants of warranty, for quiet enjoyment, or for further assurance on the part of the grantor and covenants for the payment of rent or of taxes or assessments upon the land on the part of a grantee.

(3) A covenant for the addition of some new thing to real property or for the direct benefit of some part of the property not then in existence or annexed thereto, when contained in a grant of an estate in such property and made by the covenantor expressly for his assigns or to the assigns of the covenantee, runs with the land so far as the assigns thus mentioned are concerned.

History: En. Secs. 1985, 1986, 1987, Civ. C. 1895; re-en. Secs. 4916, 4917, 4918, Rev. C. 1907; re-en. Secs. 7418, 7419, 7420, R.C.M. 1921; Cal. Civ. C. Secs. 1462, 1463, 1464; Field Civ. C. Secs. 693, 694, 695; re-en. Secs. 7418, 7419, 7420, R.C.M. 1935; R.C.M. 1947, 58-306, 58-307, 58-308.

70-17-204. Who bound by covenant. A covenant running with the land binds only those who acquire the whole estate of the covenantor in some part of the property.

History: En. Sec. 1988, Civ. C. 1895; re-en. Sec. 4919, Rev. C. 1907; re-en. Sec. 7421, R.C.M. 1921; Cal. Civ. C. Sec. 1465; Field Civ. C. Sec. 696; re-en. Sec. 7421, R.C.M. 1935; R.C.M. 1947, 58-309.

70-17-205. Nonliability for prior or subsequent breach. No one, merely by reason of having acquired an estate subject to a covenant running with the land, is liable for a breach of the covenant before he acquired the estate or after he has parted with it or ceased to enjoy its benefits.

History: En. Sec. 1989, Civ. C. 1895; re-en. Sec. 4920, Rev. C. 1907; re-en. Sec. 7422, R.C.M. 1921; Cal. Civ. C. Sec. 1466; Field Civ. C. Sec. 697; re-en. Sec. 7422, R.C.M. 1935; R.C.M. 1947, 58-310.

70-17-206. Apportionment of burdens and benefits. Where several persons holding by several titles are subject to the burden or entitled to the benefits of a covenant running with the land, it must be apportioned among them according to the value of the property subject to it held by them respectively if such value can be ascertained and, if not, then according to their respective interests in point of quantity.

History: **En. Sec. 1990, Civ. C. 1895; re-en. Sec. 4921, Rev. C. 1907; re-en. Sec. 7423, R.C.M. 1921; Cal. Civ. C. Sec. 1467; Field Civ. C. Sec. 698; re-en. Sec. 7423, R.C.M. 1935; R.C.M. 1947, 58-311.**

Part 3

Solar Easements

70-17-301. Creation of solar easements. An easement obtained for the purpose of exposure of a solar energy device must be created in writing and is subject to the same conveyancing and instrument recording requirements as other easements on real property.

History: **En. Sec. 1, Ch. 524, L. 1979.**

70-17-302. Content of solar easements. An instrument creating a solar easement must specify at least:

(1) the vertical and horizontal angles, expressed in degrees, at which the solar easement extends over the real property subject to the solar easement; and

(2) any terms or conditions under which the solar easement is granted or will be terminated.

History: **En. Sec. 2, Ch. 524, L. 1979.**

CHAPTER 18

REAL PROPERTY — ACCESSION FIXTURES AND WATERCOURSES

Part 1 — Fixtures

Section

70-18-101. Fixture attached by other — accession by owner.
70-18-102. Removal of fixture by tenant.

Part 2 — Watercourses

70-18-201. Alluvion or accretion — increase of bank.
70-18-202. Sudden removal of bank — right of owner to reclaim.
70-18-203. Island formed in navigable stream.
70-18-204. Island formed in nonnavigable stream.
70-18-205. Island formed by division of stream.

Part 1

Fixtures

70-18-101. Fixture attached by other — accession by owner. When a person affixes his property to the land of another, without an agreement permitting him to remove it, the thing affixed, except as provided in

70-18-102 and in the Uniform Commercial Code, belongs to the owner of the land unless he chooses to require the former to remove it.

History: En. Sec. 1400, Civ. C. 1895; re-en. Sec. 4572, Rev. C. 1907; re-en. Sec. 6819, R.C.M. 1921; Cal. Civ. C. Sec. 1013; Based on Field Civ. C. Sec. 442; re-en. Sec. 6819, R.C.M. 1935; amd. Sec. 11-146, Ch. 264, L. 1963; R.C.M. 1947, 67-1301.

70-18-102. Removal of fixture by tenant. A tenant may remove from the demised premises, any time during the continuance of his term, anything affixed thereto for purposes of trade, manufacture, ornament, or domestic use if the removal can be effected without injury to the premises unless the thing has, by the manner in which it is affixed, become an integral part of the premises.

History: En. Sec. 1406, Civ. C. 1895; re-en. Sec. 4578, Rev. C. 1907; re-en. Sec. 6825, R.C.M. 1921; Cal. Civ. C. Sec. 1019; re-en. Sec. 6825, R.C.M. 1935; R.C.M. 1947, 67-1307.

Part 2

Watercourses

70-18-201. Alluvion or accretion — increase of bank. Where from natural causes land forms by imperceptible degrees upon the bank of a river or stream, navigable or not navigable, either by accumulation of material or by the recession of the stream, such land belongs to the owner of the bank, subject to any existing right-of-way over the bank.

History: En. Sec. 1401, Civ. C. 1895; re-en. Sec. 4573, Rev. C. 1907; re-en. Sec. 6820, R.C.M. 1921; Cal. Civ. C. Sec. 1014; Field Civ. C. Sec. 443; re-en. Sec. 6820, R.C.M. 1935; R.C.M. 1947, 67-1302.

70-18-202. Sudden removal of bank — right of owner to reclaim. If a river or stream, navigable or not navigable, carries away by sudden violence a considerable and distinguishable part of a bank and bears it to the opposite bank or to another part of the same bank, the owner of the part carried away may reclaim it within a year after the owner of the land to which it has been united takes possession thereof.

History: En. Sec. 1402, Civ. C. 1895; re-en. Sec. 4574, Rev. C. 1907; re-en. Sec. 6821, R.C.M. 1921; Cal. Civ. C. Sec. 1015; Field Civ. C. Sec. 444; re-en. Sec. 6821, R.C.M. 1935; R.C.M. 1947, 67-1303.

70-18-203. Island formed in navigable stream. Islands and accumulations of land formed in the beds of streams which are navigable belong to the state if there is no title or prescription to the contrary.

History: En. Sec. 1403, Civ. C. 1895; re-en. Sec. 4575, Rev. C. 1907; re-en. Sec. 6822, R.C.M. 1921; Cal. Civ. C. Sec. 1016; Field Civ. C. Sec. 445; re-en. Sec. 6822, R.C.M. 1935; R.C.M. 1947, 67-1304.

70-18-204. Island formed in nonnavigable stream. An island or accumulation of land formed in a stream which is not navigable belongs to the owner of the shore on that side where the island or accumulation is formed or, if not formed on one side only, to the owners of the shore on the two sides, divided by an imaginary line drawn through the middle of the river.

History: En. Sec. 1404, Civ. C. 1895; re-en. Sec. 4576, Rev. C. 1907; re-en. Sec. 6823, R.C.M. 1921; Cal. Civ. C. Sec. 1017; Field Civ. C. Sec. 446; re-en. Sec. 6823, R.C.M. 1935; R.C.M. 1947, 67-1305.

70-18-205. Island formed by division of stream. If a stream navigable or not navigable, in forming itself a new arm, divides itself and surrounds land belonging to the owner of the shore and thereby forms an island, the island belongs to such owner.

History: En. Sec. 1405, Civ. C. 1895; re-en. Sec. 4577, Rev. C. 1907; re-en. Sec. 6824, R.C.M. 1921; Cal. Civ. C. Sec. 1018; Field Civ. C. Sec. 447; re-en. Sec. 6824, R.C.M. 1935; R.C.M. 1947, 67-1306.

CHAPTER 19

REAL PROPERTY ACTIONS GENERALLY LIMITATIONS AND ADVERSE POSSESSION

Part 1 — General Provisions

Section
70-19-101. Action defined.
70-19-102. Action affecting title or possession — filing as constructive notice.
70-19-103. Action for recovery of possession not prejudiced by alienation.

Part 2 — Actions Relating to Mining Claims

70-19-201. Actions concerning mining claims governed by local rules.
70-19-202. Abuse of property held jointly or in common — action — mining property.
70-19-203. Adverse claims under acts of congress.
70-19-204. Order for inspection or survey.

Part 3 — Provisions and Limitations Relating to the State of Montana

70-19-301. Application to lands conveyed by state.
70-19-302. Statute of limitations for state actions concerning real property.
70-19-303. Statute of limitations for actions by grantee — joinder of state.
70-19-304. Statute of limitations for action for recovery of property under void conveyance from state.
70-19-305. Certificate of purchase from state or United States prima facie evidence of ownership.

Part 4 — Limitations and Adverse Possession

70-19-401. Action for recovery — possession within 5 years required.
70-19-402. Action or defense arising out of title to property or profits — possession within 5 years required.
70-19-403. When action on claim by entry must be commenced.
70-19-404. Presumption of possession within prescribed period — adverse possession as exception.
70-19-405. Title by prescription.
70-19-406. Simple occupancy.
70-19-407. Occupancy under claim founded on instrument or judgment — when considered adverse.
70-19-408. Claim founded on instrument or judgment — what considered possession and occupation.
70-19-409. Actual occupancy under claim of title not founded on instrument or judgment — adverse.
70-19-410. Claim of title not founded on instrument or judgment — what considered occupation.
70-19-411. Occupancy and payment of taxes necessary to prove adverse possession.
70-19-412. Relation of landlord and tenant as affecting adverse possession.

70-19-413. Certain disabilities to suspend running of statutory period.
70-19-414. Right of possession not affected by descent cast.

Part 1

General Provisions

70-19-101. Action defined. The word "action", as used in parts 3 and 4, is to be construed, whenever it is necessary so to do, as including a special proceeding of a civil nature.

History: En. Sec. 559, C. Civ. Proc. 1895; re-en. Sec. 6476, Rev. C. 1907; re-en. Sec. 9066, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 363; re-en. Sec. 9066, R.C.M. 1935; R.C.M. 1947, 93-2720.

70-19-102. Action affecting title or possession — filing as constructive notice. (1) In an action affecting the title or right of possession of real property or in an action between husband and wife, the plaintiff, at the time of filing the complaint, and the defendant, at the time of filing his answer, when affirmative relief is claimed in such answer, or at any time afterward may file in the office of the clerk and recorder of the county in which the property is situated a notice of the pendency of the action containing the names of the parties and the object of the action or defense and a description of the property in that county affected thereby.

(2) From the time of filing of such notice only shall a purchaser or encumbrancer of the property affected thereby be deemed to have constructive notice of the pendency of the action and only of its pendency against parties designated by their real names.

History: En. Sec. 27, p. 48, Bannack Stat.; re-en. Sec. 27, p. 139, L. 1867; re-en. Sec. 33, p. 33, Cod. Stat. 1871; amd. Sec. 70, p. 55, L. 1877; re-en. Sec. 70, 1st Div. Rev. Stat. 1879; re-en. Sec. 70, 1st Div. Comp. Stat. 1887; amd. Sec. 634, C. Civ. Proc. 1895; re-en. Sec. 6517, Rev. C. 1907; re-en. Sec. 9109, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 409; re-en. Sec. 9109, R.C.M. 1935; R.C.M. 1947, 93-3005.

70-19-103. Action for recovery of possession not prejudiced by alienation. An action for the recovery of real property against a person in possession cannot be prejudiced by any alienation made by such person, either before or after the commencement of the action.

History: En. Sec. 241, p. 93, Bannack Stat.; re-en. Sec. 263, p. 188, L. 1867; re-en. Sec. 312, p. 95, L. 1871; re-en. Sec. 362, p. 139, L. 1877; re-en. Sec. 362, 1st Div. Rev. Stat. 1879; re-en. Sec. 374, 1st Div. Comp. Stat. 1887; re-en. Sec. 1320, C. Civ. Proc. 1895; re-en. Sec. 6880, Rev. C. 1907; re-en. Sec. 9498, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 747; re-en. Sec. 9498, R.C.M. 1935; R.C.M. 1947, 93-6222.

Part 2

Actions Relating to Mining Claims

70-19-201. Actions concerning mining claims governed by local rules. In actions respecting mining claims, proof must be admitted of the customs, usages, or regulations established and in force at the bar or diggings embracing such claim; and such customs, usages, or regulations, when not in conflict with the laws of this state or the United States, must govern the decision of the action.

History: En. Sec. 363, p. 139, L. 1877; re-en. Sec. 363, 1st Div. Rev. Stat. 1879; re-en. Sec. 375, 1st Div. Comp. Stat. 1887; amd. Sec. 1321, C. Civ. Proc. 1895; re-en. Sec. 6881, Rev. C. 1907; re-en. Sec. 9499, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 748; re-en. Sec. 9499, R.C.M. 1935; R.C.M. 1947, 93-6223.

70-19-202. Abuse of property held jointly or in common — action — mining property. If any person shall assume and exercise exclusive ownership over or take away, destroy, lessen in value, or otherwise injure or abuse any property held in joint tenancy or tenancy in common, the party aggrieved shall have his action for the injury in the same manner as he would have if such joint tenancy or tenancy in common did not exist; provided that nothing herein contained shall prevent one cotenant or joint tenant or any number of cotenants or joint tenants acting together less than all from entering on the common property at any point or points not then in the actual occupancy of the nonjoining cotenants or joint tenants and enjoying all rights of occupancy of the property, without waste and, in the case of mining property, from mining the same in a minerlike manner and extracting, milling, and disposing of the ore from the common property, paying its or their own expenses and subject to accounting to the nonjoining cotenant or joint tenant for the net profits of such mining operations, if any made, and all liens for labor and materials incurred in such mining shall attach only to the undivided interest or interests of the working cotenants or joint tenants, but nothing herein shall prevent or preclude the cotenant or joint tenant, not joining in the operation of such mining property, from receiving his, its, or their proportionate share of all ore or ores on the dump upon payment or tendering payment of the actual cost of mining the same.

History: En. Sec. 2, p. 454, Bannack Stat.; re-en. Sec. 2, p. 504, Cod. Stat. 1871; re-en. Sec. 771, 5th Div. Rev. Stat. 1879; re-en. Sec. 1285, 5th Div. Comp. Stat. 1887; amd. Sec. 592, C. Civ. Proc. 1895; en. Sec. 1, p. 134, L. 1899; re-en. Sec. 6499, Rev. C. 1907; re-en. Sec. 9091, R.C.M. 1921; re-en. Sec. 9091, R.C.M. 1935; R.C.M. 1947, 93-2829.

70-19-203. Adverse claims under acts of congress. In an action brought to determine the respective rights of claimants to the possession of a mining claim or quartz lode under the provisions of the acts of congress of the United States, it is immaterial which party is in possession, and it is sufficient to confer jurisdiction upon the court if it appears from the pleadings that the application for a patent has been made and an adverse claim thereto filed and allowed in the proper land office, and the verdict or decision must find which party is entitled to the possession of the premises in dispute.

History: En. Sec. 1322, C. Civ. Proc. 1895; re-en. Sec. 6882, Rev. C. 1907; re-en. Sec. 9500, R.C.M. 1921; re-en. Sec. 9500, R.C.M. 1935; R.C.M. 1947, 93-6224.

70-19-204. Order for inspection or survey. (1) Whenever any person shall have any right to or interest in any lead, lode, or mining claim which is in the possession of another person and it shall be necessary for the ascertainment, enforcement, or protection of such right or interest that an inspection, examination, or survey of such lead, mine, lode, or mining claim should be had or made or whenever any inspection, examination, or survey of any such lode or mining claim shall be necessary to protect, ascertain, or enforce the right or interest of any person in another mine, lode, or mining claim and the person in possession of the same shall refuse for a period of 3 days after demand therefor in writing to allow such inspection, examination, or survey to be had or made, the party so desiring the same may present to the district court or a judge thereof of the county wherein the mine, lead, lode, or mining claim is situated a petition under oath setting out his interest in the premises, describing the same, that the premises are in the possession of a party, naming him, the reason why such examination, inspection, or survey is necessary, the demand made on the person in possession so to permit such examination, inspection, or survey, and his refusal so to do.

(2) The court or judge shall thereupon appoint a time and place for hearing such petition and shall order notice thereof to be served upon the adverse party, which notice shall be served at least 1 day before the day of hearing. On the hearing either party may read affidavits or produce oral testimony, and if the court or judge is satisfied that the facts stated in the petition are true, he shall make an order for an inspection, examination, or survey of the lode or mining claim in question in such manner, at such time, and by such persons as are mentioned in the order. Such person shall thereupon have free access to such mine, lead, lode, or mining claim for the purpose of making such inspection, examination, or survey, and any interference with such person while acting under such order shall be contempt of court.

(3) If the order of the court is made while an action is pending between the parties to the order, the costs of obtaining the order shall abide the result of the action, but all costs of making such examination or survey shall be paid by the petitioner.

History: En. Sec. 8, p. 10, L. 1881; re-en. Sec. 376, 1st Div. Comp. Stat. 1887; re-en. Sec. 1317, C. Civ. Proc. 1895; re-en. Sec. 6876, Rev. C. 1907; re-en. Sec. 9494, R.C.M. 1921; re-en. Sec. 9494, R.C.M. 1935; R.C.M. 1947, 93-6218.

Part 3

Provisions and Limitations Relating to the State of Montana

70-19-301. Application to lands conveyed by state. The provisions of parts 3 and 4 shall apply to all lands sold and conveyed before July 1, 1955, by the state of Montana for which a valid consideration was received by the state; provided that the state, at the time of any such sale or conveyance, was not precluded by the constitution of Montana or by the terms of the grant of such lands by the United States from selling and disposing of the same; and provided further, that no occupant of a public way or other ground dedicated or appropriated by the state to public use and not subject to sale shall acquire by reason of his occupancy any title thereto.

History: En. Sec. 1, Ch. 195, L. 1955; R.C.M. 1947, 93-2516.

70-19-302. Statute of limitations for state actions concerning real property. The state will not sue any person for or in respect to any real property or the issues or profits thereof by reason of the right or title of the state to the same unless:

(1) such right or title shall have accrued within 10 years before any action or other proceeding for the same is commenced; or

(2) the state or those from whom it claims shall have received the rents and profits of such real property or of some part thereof within the space of 10 years.

History: En. Sec. 480, C. Civ. Proc. 1895; re-en. Sec. 6429, Rev. C. 1907; re-en. Sec. 9012, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 315; re-en. Sec. 9012, R.C.M. 1935; R.C.M. 1947, 93-2501.

70-19-303. Statute of limitations for actions by grantee — joinder of state. (1) No action can be brought for or in respect to real property by any person claiming under letters patent or grants from this state unless the plaintiff, his ancestor, predecessor, or grantor was seized or possessed of the property in question within 10 years before the commencement of the action.

(2) In any such action the state of Montana may be made a party defendant and shall have only the defenses thereto as are available to other parties defendant to the action, provided that no judgment in any such action shall include damages, attorney fees, or court costs against the state of Montana.

History: En. Sec. 481, C. Civ. Proc. 1895; re-en. Sec. 6430, Rev. C. 1907; re-en. Sec. 9013, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 316; re-en. Sec. 9013, R.C.M. 1935; amd. Sec. 1, Ch. 196, L. 1955; R.C.M. 1947, 93-2502.

70-19-304. Statute of limitations for action for recovery of property under void conveyance from state. When letters patent or grants of real property issued or made by the state are declared void by the determination of a competent court, an action for the recovery of the property so conveyed may be brought, either by the state or by any subsequent patentee or grantee of the property, his heirs, or assigns, within 10 years after such determination, but not after that period.

History: En. Sec. 482, C. Civ. Proc. 1895; re-en. Sec. 6431, Rev. C. 1907; re-en. Sec. 9014, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 317; re-en. Sec. 9014, R.C.M. 1935; R.C.M. 1947, 93-2503.

70-19-305. Certificate of purchase from state or United States prima facie evidence of ownership. A certificate of purchase or of location of any lands in this state issued or made in pursuance of any law of the United States or of this state is prima facie evidence that the holder or assignee of such certificate is the owner of the land described therein, but this evidence may be overcome by proof that at the time of the location or time of filing a preemption claim on which the certificate may have been issued, the land was in the adverse possession of the adverse party or those under whom he claims or that the adverse party is holding the land for mining purposes.

History: En. Sec. 3213, C. Civ. Proc. 1895; re-en. Sec. 7931, Rev. C. 1907; re-en. Sec. 10575, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1925; re-en. Sec. 10575, R.C.M. 1935; R.C.M. 1947, 93-1001-37.

Part 4

Limitations and Adverse Possession

70-19-401. Action for recovery — possession within 5 years required. No action for the recovery of real property or for the possession thereof can be maintained unless it appear that the plaintiff, his ancestor, predecessor, or grantor was seized or possessed of the property in question within 5 years before the commencement of the action.

History: En. Sec. 29, p. 45, L. 1877; re-en. Sec. 29, 1st Div. Rev. Stat. 1879; re-en. Sec. 29, 1st Div. Comp. Stat. 1887; amd Sec. 483, C. Civ. Proc. 1895; re-en. Sec. 6432, Rev. C. 1907; re-en. Sec. 9015, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 318; re-en. Sec. 9015, R.C.M. 1935; amd. Sec. 1, Ch. 224, L. 1953; amd. Sec. 12, Ch. 263, L. 1975; R.C.M. 1947, 93-2504.

70-19-402. Action or defense arising out of title to property or profits — possession within 5 years required. No cause of action or defense to an action, arising out of the title to real property or to rents or profits out of the same, can be effectual unless it appear that the person prosecuting the action or making the defense or under whose title the action is prosecuted or the defense is made or the ancestor, predecessor, or grantor of such person was seized or possessed of the premises in question within 5 years before the commencement of the act in respect to which such action is prosecuted or defense made.

History: En. Sec. 30, p. 45, L. 1877; re-en. Sec. 30, 1st Div. Rev. Stat. 1879; re-en. Sec. 30, 1st Div. Comp. Stat. 1887; amd. Sec. 484, C. Civ. Proc. 1895; re-en. Sec. 6433, Rev. C. 1907; re-en. Sec. 9016, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 319; re-en. Sec. 9016, R.C.M. 1935; amd. Sec. 2, Ch. 224, L. 1953; R.C.M. 1947, 93-2505.

70-19-403. When action on claim by entry must be commenced. No entry upon real estate is deemed sufficient or valid as a claim unless an action be commenced thereupon within 1 year after making such entry and within 5 years from the time when the right to make it descended or accrued.

History: En. Sec. 3, p. 466, Bannack Stat.; re-en. Sec. 3, p. 515, Cod. Stat. 1871; amd. Sec. 31, p. 46, L. 1877; re-en. Sec. 31, 1st Div. Rev. Stat. 1879; re-en. Sec. 31, 1st Div. Comp. Stat. 1887; amd. Sec. 485, C. Civ. Proc. 1895; re-en. Sec. 6434, Rev. C. 1907; re-en. Sec. 9017, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 320; re-en. Sec. 9017, R.C.M. 1935; amd. Sec. 3, Ch. 224, L. 1953; R.C.M. 1947, 93-2506.

70-19-404. Presumption of possession within prescribed period — adverse possession as exception. In every action for the recovery of real property or the possession thereof, the person establishing a legal title to the property is presumed to have been possessed thereof within the time required by law, and the occupation of the property by any other person is deemed to have been under and in subordination to the legal title unless it appear that the property has been held and possessed adversely to such legal title for 5 years before the commencement of the action.

History: En. Sec. 4, p. 466, Bannack Stat.; re-en. Sec. 4, p. 515, Cod. Stat. 1871; amd. Sec. 32, p. 46, L. 1877; re-en. Sec. 32, 1st Div. Rev. Stat. 1879; re-en. Sec. 32, 1st Div. Comp. Stat. 1887; amd. Sec. 486, C. Civ. Proc. 1895; re-en. Sec. 6435, Rev. C. 1907; re-en. Sec. 9018, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 321; re-en. Sec. 9018, R.C.M. 1935; amd. Sec. 4, Ch. 224, L. 1953; R.C.M. 1947, 93-2507.

70-19-405. Title by prescription. Occupancy for the period prescribed by this chapter as sufficient to bar an action for the recovery of the property confers a title thereto, denominated a title by prescription, which is sufficient against all.

History: En. Sec. 1391, Civ. C. 1895; re-en. Sec. 4571, Rev. C. 1907; re-en. Sec. 6818, R.C.M. 1921; Cal. Civ. C. Sec. 1007; Field Civ. C. Sec. 441; re-en. Sec. 6818, R.C.M. 1935; R.C.M. 1947, 67-1203.

70-19-406. Simple occupancy. Occupancy for any period confers a title sufficient against all except the state and those who have title by prescription, accession, transfer, will, or succession.

History: En. Sec. 1390, Civ. C. 1895; re-en. Sec. 4570, Rev. C. 1907; re-en. Sec. 6817, R.C.M. 1921; Cal. Civ. C. Sec. 1006; Field Civ. C. Sec. 440; re-en. Sec. 6817, R.C.M. 1935; R.C.M. 1947, 67-1202.

70-19-407. Occupancy under claim founded on instrument or judgment — when considered adverse. When it appears that the occupant or those under whom he claims entered into the possession of the property under claim of title, exclusive of other right, founding such claim upon a written instrument as being a conveyance of the property in question or upon the decree or judgment of a competent court and that there has been a continued occupation and possession of the property included in such instrument, decree, or judgment or of some part of the property under such claim for 5 years, the property so included is deemed to have been held adversely, except that when it consists of a tract divided into lots, the possession of one lot is not deemed a possession of any other lot of the same tract.

History: En. Sec. 33, p. 46, L. 1877; re-en. Sec. 33, 1st Div. Rev. Stat. 1879; re-en. Sec. 33, 1st Div. Comp. Stat. 1887; amd. Sec. 487, C. Civ. Proc. 1895; re-en. Sec. 6436, Rev. C. 1907; re-en. Sec. 9019, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 322; re-en. Sec. 9019, R.C.M. 1935; amd. Sec. 5, Ch. 224, L. 1953; R.C.M. 1947, 93-2508.

70-19-408. Claim founded on instrument or judgment — what considered possession and occupation. (1) For the purpose of constituting an adverse possession by any person claiming a title founded upon a written instrument or a judgment or decree, land is deemed to have been possessed and occupied in the following cases:

(a) where it has been usually cultivated or improved;

(b) where it has been protected by a substantial enclosure;

(c) where although not enclosed it has been used for the supply of fuel or of fencing timber, either for the purpose of husbandry or for pasturage or for the ordinary use of the occupant.

(2) Where a known farm or a single lot has been partly improved, the portion of such farm or lot that has been left not cleared or not enclosed, according to the usual course and custom of the adjoining country, shall be deemed to have been occupied for the same length of time as the part improved and cultivated.

History: En. Sec. 5, p. 466, Bannack Stat.; re-en. Sec. 5, p. 516, Cod. Stat. 1871; amd. Sec. 34, p. 46, L. 1877; re-en. Sec. 34, 1st Div. Rev. Stat. 1879; re-en. Sec. 34, 1st Div. Comp. Stat. 1887; amd. Sec. 488, C. Civ. Proc. 1895; re-en. Sec. 6437, Rev. C. 1907; re-en. Sec. 9020, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 323; re-en. Sec. 9020, R.C.M. 1935; R.C.M. 1947, 93-2509.

70-19-409. Actual occupancy under claim of title not founded on instrument or judgment — adverse. Where it appears that there has been an actual continued occupation of land under a claim of title, exclusive of any other right, but not founded upon a written instrument, judgment, or decree, the land so actually occupied and no other is deemed to have been held adversely.

History: En. Sec. 6, p. 467, Bannack Stat.; re-en. Sec. 6, p. 516, Cod. Stat. 1871; re-en. Sec. 35, p. 46, L. 1877; re-en. Sec. 35, 1st Div. Rev. Stat. 1879; re-en. Sec. 35, 1st Div. Comp. Stat. 1887;

amd. Sec. 489, C. Civ. Proc. 1895; re-en. Sec. 6438, Rev. C. 1907; re-en. Sec. 9021, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 324; re-en. Sec. 9021, R.C.M. 1935; R.C.M. 1947, 93-2510.

70-19-410. Claim of title not founded on instrument or judgment — what considered occupation. For the purpose of constituting an adverse possession by a person claiming title not founded upon a written instrument, judgment, or decree, land is deemed to have been possessed and occupied in the following cases only:

(1) where it has been protected by a substantial enclosure;

(2) where it has been usually cultivated or improved.

History: En. Sec. 7, p. 467, Bannack Stat.; re-en. Sec. 7, p. 516, Cod. Stat. 1871; amd. Sec. 36, p. 47, L. 1877; re-en. Sec. 36, 1st Div. Rev. Stat. 1879; re-en. Sec. 36, 1st Div. Comp. Stat. 1887; re-en. Sec. 490, C. Civ. Proc. 1895; re-en. Sec. 6439, Rev. C. 1907; re-en. Sec. 9022, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 325; re-en. Sec. 9022, R.C.M. 1935; R.C.M. 1947, 93-2511.

70-19-411. Occupancy and payment of taxes necessary to prove adverse possession. In no case shall adverse possessions be considered established under this code unless it shall be shown that the land has been occupied and claimed for a period of 5 years continuously and the party or persons, their predecessors, and grantors have during such period paid all the taxes, state, county, or municipal, which have been legally levied and assessed upon said land.

History: En. Sec. 1, Ch. 3, L. 1917; re-en. Sec. 9024, R.C.M. 1921; re-en. Sec. 9024, R.C.M. 1935; amd. Sec. 7, Ch. 224, L. 1953; R.C.M. 1947, 93-2513.

70-19-412. Relation of landlord and tenant as affecting adverse possession. When the relation of landlord and tenant has existed between any persons, the possession of the tenant is deemed the possession of the landlord until the expiration of 5 years from the termination of the tenancy or, where there has been no written lease, until the expiration of 5 years from the time of the last payment of rent, notwithstanding such tenant may have acquired another title or may have claimed to hold adversely to his landlord. But such presumptions cannot be made after the periods prescribed in this section.

History: En. Sec. 37, p. 47, L. 1877; re-en. Sec. 37, 1st Div. Rev. Stat. 1879; re-en. Sec. 37, 1st Div. Comp. Stat. 1887; amd. Sec. 491, C. Civ. Proc. 1895; re-en. Sec. 6440, Rev. C. 1907; re-en. Sec. 9023, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 326; re-en. Sec. 9023, R.C.M. 1935; amd. Sec. 6, Ch. 224, L. 1953; R.C.M. 1947, 93-2512.

70-19-413. Certain disabilities to suspend running of statutory period. (1) Subsection (2) applies if a person entitled to commence an action for the recovery of real property or for the recovery of the possession thereof or to make any entry or defense founded on the title to real property or to rents or services out of the same is, at the same time such title first descends or accrues:

(a) under the age of majority;

(b) seriously mentally ill; or

(c) imprisoned on a criminal charge or in execution upon conviction of a criminal offense for a term of less than for life.

(2) The time during which disability continues is not considered any portion of the time in this chapter limited for the commencement of such action or the making of such entry or defense, but such action may be commenced

or entry or defense made within the period of 5 years after such disability ceases or after the death of the person entitled who dies under such disability, but such action may not be commenced or entry or defense made after that period.

History: En. Sec. 39, p. 48, L. 1877; re-en. Sec. 39, 1st Div. Rev. Stat. 1879; re-en. Sec. 39, 1st Div. Comp. Stat. 1887; amd. Sec. 493, C. Civ. Proc. 1895; re-en. Sec. 6442, Rev. C. 1907; re-en. Sec. 9026, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 328; re-en. Sec. 9026, R.C.M. 1935; amd. Sec. 8, Ch. 224, L. 1953; R.C.M. 1947, 93-2515; amd. Sec. 6, Ch. 115, L. 1979; amd. Sec. 181, Ch. 575, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "or for dower" after "possession thereof" in (1).

70-19-414. Right of possession not affected by descent cast. The right of a person to the possession of real property is not impaired or affected by a descent being cast in consequence of the death of a person in possession of such property.

History: En. Sec. 38, p. 48, L. 1877; re-en. Sec. 38, 1st Div. Rev. Stat. 1879; re-en. Sec. 38, 1st Div. Comp. Stat. 1887; re-en. Sec. 492, C. Civ. Proc. 1895; re-en. Sec. 6441, Rev. C. 1907; re-en. Sec. 9025, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 327; re-en. Sec. 9025, R.C.M 1935; R.C.M. 1947, 93-2514.

CHAPTER 20

TRANSFER OF REAL PROPERTY

Part 1 — Method of Transfer

Section

70-20-101. Transfer to be in writing — statute of frauds.
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Part 1

Method of Transfer

70-20-101. Transfer to be in writing — statute of frauds. No estate or interest in real property, other than an estate at will or for a term not exceeding 1 year, or any trust over or power concerning it or in any manner relating thereto can be created, granted, assigned, surrendered, or declared otherwise than by operation of law or a conveyance or other instrument in writing, subscribed by the party creating, granting, assigning, surrendering, or declaring it or by his lawful agent thereunto authorized by writing.

History: En. Sec. 6, p. 393, Cod. Stat. 1871; re-en. Sec. 160, 5th Div. Rev. Stat. 1879; re-en. Sec. 217, 5th Div. Comp. Stat. 1887; re-en. Sec. 3274, C. Civ. Proc. 1895; re-en. Sec. 7967, Rev. C. 1907; re-en. Sec. 10611, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1971; re-en. Sec. 10611, R.C.M. 1935; R.C.M. 1947, 93-1401-5; amd. Sec. 7, Ch. 115, L. 1979.

70-20-102. Exceptions to statute of frauds. Section 70-20-101(2) must not be construed to:

(1) affect the power of a testator in the disposition of his real property by a last will and testament;

(2) prevent any trust from arising or being extinguished by implication or operation of law; or

(3) abridge the power of any court to compel the specific performance of an agreement, in case of part performance thereof.

History: En. Sec. 7, p. 393, Cod. Stat. 1871; re-en. Sec. 161, 5th Div. Rev. Stat. 1879; re-en. Sec. 218, 5th Div. Comp. Stat. 1887; re-en. Sec. 3275, C. Civ. Proc. 1895; re-en. Sec. 7968, Rev. C. 1907; re-en. Sec. 10612, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1972; re-en. Sec. 10612, R.C.M. 1935; R.C.M. 1947, 93-1401-6.

70-20-103. Form of grant. A grant of an estate in real property may be made in substance as follows:

"I, A.B., in consideration of .... dollars now paid, grant to C.D. all the real property situated in (insert name of county) County, state of Montana, bounded (or described) as follows: (Here insert description, or if the land sought to be conveyed has a descriptive name, it may be described by the name as, for instance, "the Norris ranch".)

Witness my hand this (insert day) day of (insert month), 19...

....
A.B."

History: En. Sec. 1501, Civ. C. 1895; re-en. Sec. 4613, Rev. C. 1907; re-en. Sec. 6860, R.C.M. 1921; Cal. Civ. C. Sec. 1092; re-en. Sec. 6860, R.C.M. 1935; R.C.M. 1947, 67-1602.

70-20-104. Words of inheritance unnecessary. Words of inheritance or succession are not requisite to transfer a fee in real property.

History: En. Sec. 1476, Civ. C. 1895; re-en. Sec. 4608, Rev. C. 1907; re-en. Sec. 6855, R.C.M. 1921; Cal. Civ. C. Sec. 1072; Field Civ. C. Sec. 478; re-en. Sec. 6855, R.C.M. 1935; R.C.M. 1947, 67-1521.

70-20-105. Joint tenancy — how created. (1) A joint tenancy as to any interest in real property may be established by the owner thereof by designating in the instrument of conveyance or transfer the names of such joint tenants, including his own, without the necessity of any transfer or conveyance to or through a third person.

(2) All joint tenancies created in this manner prior to July 1, 1963, are sufficient in law to create a joint tenancy.

History: En. Sec. 1, Ch. 208, L. 1963; amd. Sec. 1, Ch. 9, L. 1971; R.C.M. 1947, 67-1602.1.

70-20-106. Grant by married person — how acknowledged. No estate in the real property of a married person passes by any grant purporting to be executed or acknowledged by such person unless the grant or instrument is acknowledged by the grantor in the manner prescribed by 1-5-206 and 1-5-207.

History: En. Sec. 1502, Civ. C. 1895; re-en. Sec. 4614, Rev. C. 1907; re-en. Sec. 6861, R.C.M. 1921; Cal. Civ. C. Sec. 1093; Based on Field Civ. C. Sec. 486; re-en. Sec. 6861, R.C.M. 1935; amd. Sec. 33, Ch. 535, L. 1975; R.C.M. 1947, 67-1603.

70-20-107. Power of attorney of married person — how acknowledged. A power of attorney of a married person, authorizing the execution of an instrument transferring an estate in his separate real property, has no validity for that purpose unless acknowledged by him in the manner provided in 1-5-206 and 1-5-207.

History: En. Sec. 1503, Civ. C. 1895; re-en. Sec. 4615, Rev. C. 1907; re-en. Sec. 6862, R.C.M. 1921; Cal. Civ. C. Sec. 1094; re-en. Sec. 6862, R.C.M. 1935; R.C.M. 1947, 67-1604; amd. Sec. 8, Ch. 115, L. 1979.

70-20-108. Attorney-in-fact — how must execute for principal. When an attorney-in-fact executes an instrument transferring an estate in real property, he must subscribe the name of his principal to it and his own name as attorney-in-fact.

History: En. Sec. 1504, Civ. C. 1895; re-en. Sec. 4616, Rev. C. 1907; re-en. Sec. 6863, R.C.M. 1921; Cal. Civ. C. Sec. 1095; re-en. Sec. 6863, R.C.M. 1935; R.C.M. 1947, 67-1605.

70-20-109. Change of owner's name after acquisition — later conveyance to include former name. Any person in whom the title of real estate is vested, who shall afterwards from any cause have his or her name changed, shall, in any conveyances of said real estate so held, set forth the name in which he or she derived title to said real estate, and a failure to comply with the provisions of this section shall subject any such person to a penalty of $50, to be collected by the county attorney of the county in which the real estate is situated and by him paid into the treasury of said county for the benefit of the common schools thereof.

History: En. Sec. 1505, Civ. C. 1895; re-en. Sec. 4617, Rev. C. 1907; re-en. Sec. 6864, R.C.M. 1921; Cal. Civ. C. Sec. 1096; re-en. Sec. 6864, R.C.M. 1935; R.C.M. 1947, 67-1606.

70-20-110. Redelivery or cancellation of grant — no retransfer. Redelivering a grant of real property to the grantor or canceling it does not operate to retransfer the title.

History: En. Sec. 1456, Civ. C. 1895; re-en. Sec. 4600, Rev. C. 1907; re-en. Sec. 6847, R.C.M. 1921; Cal. Civ. C. Sec. 1058; Field Civ. C. Sec. 469; re-en. Sec. 6847, R.C.M. 1935; R.C.M. 1947, 67-1513.

Part 2

Construction of Grant

70-20-201. Rules for construing description. The following are the rules for construing the descriptive part of a conveyance of real property when the construction is doubtful and there are no other sufficient circumstances to determine it:

(1) Where there are certain definite and ascertained particulars in the description, the addition of others which are indefinite, unknown, or false does not frustrate the conveyance, but it is to be construed by the first mentioned particulars.

(2) When permanent and visible or ascertained boundaries or monuments are inconsistent with the measurement, either of lines, angles, or surfaces, the boundaries or monuments are paramount.

(3) Between different measurements which are inconsistent with each other, that of angles is paramount to that of surfaces and that of lines paramount to both.

(4) When a road or stream of water not navigable is the boundary, the rights of the grantor to the middle of the road or the thread of the stream are included in the conveyance, except where the road or thread of the stream is held under another title.

(5) When a navigable lake, where there is no tide, is the boundary, the rights of the grantor to low watermark are included in the conveyance.

(6) When the description refers to a map and that reference is inconsistent with other particulars, it controls them if it appear that the parties acted with reference to the map; otherwise, the map is subordinate to other definite and ascertained particulars.

History: En. Sec. 3413, C. Civ. Proc. 1895; re-en. Sec. 8039, Rev. C. 1907; re-en. Sec. 10683, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2077; re-en. Sec. 10683, R.C.M. 1935; R.C.M. 1947, 93-2201-4.

70-20-202. Extrinsic evidence not to be considered in construction of deed — exceptions. (1) When the terms of an agreement have been reduced to writing by the parties, it is to be considered as containing all those terms, and therefore there can be between the parties and their representatives or successors in interest no evidence of the terms of the agreement other than the contents of the writing except in the following cases:

(a) where a mistake or imperfection of the writing is put in issue by the pleadings;

(b) where the validity of the agreement is the fact in dispute.

(2) But this section does not exclude other evidence of the circumstances under which the agreement was made or to which it relates, as defined in 1-4-102, or to explain an extrinsic ambiguity or to establish illegality or fraud.

(3) The term "agreement" includes deeds and wills as well as contracts between parties.

History: En. Sec. 610, p. 198, L. 1877; re-en. Sec. 610, 1st Div. Rev. Stat. 1879; re-en. Sec. 628, 1st Div. Comp. Stat. 1887; re-en. Sec. 3132, C. Civ. Proc. 1895; re-en. Sec. 7873, Rev. C. 1907; re-en. Sec. 10517, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1856; re-en. Sec. 10517, R.C.M. 1935; R.C.M. 1947, 93-401-13.

Part 3

Effect of Transfer

70-20-301. Fee simple presumed to pass. A fee simple title is presumed to be intended to pass by a grant of real property unless it appears from the grant that a lesser estate was intended.

History: En. Sec. 1511, Civ. C. 1895; re-en. Sec. 4619, Rev. C. 1907; re-en. Sec. 6866, R.C.M. 1921; Cal. Civ. C. Sec. 1105; re-en. Sec. 6866, R.C.M. 1935; R.C.M. 1947, 67-1608.

70-20-302. After-acquired title to pass by operation of law. Where a person purports by proper instrument to grant real property in fee simple and subsequently acquires any title or claim of title thereto, the same passes by operation of law to the grantee or his successors.

History: En. Sec. 32, p. 401, Cod. Stat. 1871; re-en. Sec. 209, 5th Div. Rev. Stat. 1879; re-en. Sec. 267, 5th Div. Comp. Stat. 1887; amd. Sec. 1512, Civ. C. 1895; re-en. Sec. 4620, Rev. C. 1907; re-en. Sec. 6867, R.C.M. 1921; Cal. Civ. C. Sec. 1106; re-en. Sec. 6867, R.C.M. 1935; R.C.M. 1947, 67-1609.

70-20-303. Grant conclusive — exception for good faith purchaser. Every grant of an estate in real property is conclusive against the grantor, also against every one subsequently claiming under him, except a purchaser or encumbrancer who in good faith and for a valuable consideration acquires a title or lien by an instrument that is first duly recorded.

History: En. Sec. 1513, Civ. C. 1895; re-en. Sec. 4621, Rev. C. 1907; re-en. Sec. 6868, R.C.M. 1921; Cal. Civ. C. Sec. 1107; Field Civ. C. Sec. 490; re-en. Sec. 6868, R.C.M. 1935; R.C.M. 1947, 67-1610.

70-20-304. Implied covenants — free from encumbrance. (1) From the use of the word "grant" in any conveyance by which an estate of inheritance or fee simple or possessory title is to be passed, the following covenants and none other on the part of the grantor for himself and his heirs to the grantee, his heirs, and assigns are implied unless restrained by express terms contained in such conveyance:

(a) that previous to the time of the execution of such conveyance the grantor has not conveyed the same estate or any right, title, or interest therein to any person other than the grantee;

(b) that such estate is at the time of the execution of such conveyance free from encumbrances done, made, or suffered by the grantor or any person claiming under him.

(2) Such convenants may be sued upon in the same manner as if they had been expressly inserted in the conveyance.

History: En. Sec. 50, p. 487, Bannack Stat.; re-en. Sec. 50, p. 404, Cod. Stat. 1871; re-en. Sec. 227, 5th Div. Rev. Stat. 1879; re-en. Sec. 285, 5th Div. Comp. Stat. 1887; amd. Sec. 1519, Civ. C. 1895; re-en. Sec. 4627, Rev. C. 1907; re-en. Sec. 6874, R.C.M. 1921; Cal. Civ. C. Sec. 1113; re-en. Sec. 6874, R.C.M. 1935; R.C.M. 1947, 67-1616.

70-20-305. Encumbrance defined. The term "encumbrances" includes taxes, assessments, and all liens upon real property.

History: En. Sec. 1520, Civ. C. 1895; re-en. Sec. 4628, Rev. C. 1907; re-en. Sec. 6875, R.C.M. 1921; Cal. Civ. C. Sec. 1114; re-en. Sec. 6875, R.C.M. 1935; R.C.M. 1947, 67-1617.

70-20-306. Responsibility of heirs of covenantor — certain warranties abolished. Lineal and collateral warrants, with all their incidents, are abolished, but the heirs and devisees of every person who has made any covenant or agreement in reference to the title of, in, or to any real property are answerable upon such covenant or agreement to the extent of the land descended or devised to them in the cases and in the manner prescribed by law.

History: En. Sec. 49, p. 487, Bannack Stat.; re-en. Sec. 49, p. 403, Cod. Stat. 1871; re-en. Sec. 226, 5th Div. Rev. Stat. 1879; re-en. Sec. 284, 5th Div. Comp. Stat. 1887; amd. Sec. 1521, Civ. C. 1895; re-en. Sec. 4629, Rev. C. 1907; re-en. Sec. 6876, R.C.M. 1921; Cal. Civ. C. Sec. 1115; re-en. Sec. 6876, R.C.M. 1935; R.C.M. 1947, 67-1618.

70-20-307. Transfer of land bounded by highway — what passes. A transfer of land bounded by a highway passes the title of the person whose estate is transferred to the soil of the highway in front of the center thereof unless a different intent appears from the grant.

History: En. Sec. 1518, Civ. C. 1895; re-en. Sec. 4626, Rev. C. 1907; re-en. Sec. 6873, R.C.M. 1921; Cal. Civ. C. Sec. 1112; Based on Field Civ. C. Sec. 492; re-en. Sec. 6873, R.C.M. 1935; R.C.M. 1947, 67-1615.

70-20-308. Easements to pass with property. A transfer of real property passes all easements attached thereto and creates in favor thereof an easement to use other real property of the person whose estate is transferred in the same manner and to the same extent as such property was obviously and permanently used by the person whose estate is transferred for the benefit thereof at the time when the transfer was agreed upon or completed.

History: En. Sec. 1510, Civ. C. 1895; re-en. Sec. 4618, Rev. C. 1907; re-en. Sec. 6865, R.C.M. 1921; Cal. Civ. C. Sec. 1104; Field Civ. C. Sec. 488; re-en. Sec. 6865, R.C.M. 1935; R.C.M. 1947, 67-1607.

70-20-309. Transfer of owner ousted of possession — effect. Any person claiming title to real property in the adverse possession of another may transfer it with the same effect as if in actual possession.

History: En. Sec. 1443, Civ. C. 1895; re-en. Sec. 4593, Rev. C. 1907; re-en. Sec. 6840, R.C.M. 1921; Cal. Civ. C. Sec. 1047; re-en. Sec. 6840, R.C.M. 1935; R.C.M. 1947, 67-1506.

70-20-310. Conveyance in joint tenancy — right of survivorship. In all conveyances of real property made in joint tenancy where the right of survivorship is contained in the grant of such conveyance, the right of survivorship exists by virtue of such grant.

History: En. Sec. 1, Ch. 118, L. 1943; R.C.M. 1947, 67-310; amd. Sec. 9, Ch. 115, L. 1979.

70-20-311. Grant on condition subsequent. When a grant is made upon condition subsequent and is subsequently defeated by the nonperformance of the condition, the person otherwise entitled to hold under the grant must reconvey the property to the grantor or his successors by grant duly acknowledged for record.

History: En. Sec. 1515, Civ. C. 1895; re-en. Sec. 4623, Rev. C. 1907; re-en. Sec. 6870, R.C.M. 1921; Cal. Civ. C. Sec. 1109; re-en. Sec. 6870, R.C.M. 1935; R.C.M. 1947, 67-1612.

70-20-312. Grant on condition precedent. An instrument purporting to be a grant of real property to take effect upon condition precedent passes the estate upon the performance of the condition.

History: En. Sec. 1516, Civ. C. 1895; re-en. Sec. 4624, Rev. C. 1907; re-en. Sec. 6871, R.C.M. 1921; Cal. Civ. C. Sec. 1110; re-en. Sec. 6871, R.C.M. 1935; R.C.M. 1947, 67-1613.

70-20-313. Grant by owner for life or years. A grant made by an owner of an estate for life or years, purporting to transfer a greater estate than he could lawfully transfer, does not work a forfeiture of his estate but passes to the grantee all the estate which the grantor could lawfully transfer.

History: En. Sec. 1514, Civ. C. 1895; re-en. Sec. 4622, Rev. C. 1907; re-en. Sec. 6869, R.C.M. 1921; Cal. Civ. C. Sec. 1108; Field Civ. C. Sec. 491; re-en. Sec. 6869, R.C.M. 1935; R.C.M. 1947, 67-1611.

70-20-314. Grant of property occupied by tenant. When real property is occupied by a tenant, a grant of any estate therein by his landlord is valid without an attornment of the tenant to the grantee; but the payment of rent to such grantor by his tenant before notice of the grant is binding upon the grantee, and the tenant is not liable to the grantee for any breach of the condition of the lease until he has had notice of the grant.

History: En. Sec. 1517, Civ. C. 1895; re-en. Sec. 4625, Rev. C. 1907; re-en. Sec. 6872, R.C.M. 1921; Cal. Civ. C. Sec. 1111; Field Civ. C. Sec. 493; re-en. Sec. 6872, R.C.M. 1935; R.C.M. 1947, 67-1614.

70-20-315. Validation of unacknowledged deeds. All deeds to real property executed prior to January 1, 1973, in this state or any state or territory of the United States, provided no action is pending on July 1, 1973, to set aside any such deed, which shall have been signed by the grantors in due form, shall be sufficient in law to convey the legal title to the premises therein described from the grantors to the grantees, without any other execution or acknowledgment or witnesses thereto whatever; and such deeds so executed shall be received in evidence in all courts in this state and be conclusive evidence of the title to the lands therein described against the grantors, their heirs, and assigns.

History: En. Sec. 1, Ch. 82, L. 1973; R.C.M. 1947, 39-139.

70-20-316. Deeds made prior to 1900 — presumption grantor had no wife. When a deed to real property has been made, executed, and acknowledged prior to the year 1900 by a grantor without recital in the body of the deed or acknowledgment as to whether or not the grantor is married or single and the wife of such grantor, if any, not joining in the conveyance or otherwise releasing or conveying her dower, the presumption shall be that the person conveying such land had no wife living at the date of such conveyance and that such land was conveyed free of all right of dower, inchoate or vested.

History: En. Sec. 1, Ch. 183, L. 1945; R.C.M. 1947, 39-131.

Part 4

Fraudulent Conveyances

70-20-401. Instrument made with intent to defraud — void. Every instrument, other than a will, affecting an estate in real property, including every charge upon real property or upon its rents or profits, made with intent to defraud prior or subsequent purchasers thereof or encumbrancers thereon is void as against every purchaser or encumbrancer for value of the same property or the rents or profits thereof.

History: En. Sec. 1, p. 492, Bannack Stat.; re-en. Sec. 1, p. 392, Cod. Stat. 1871; re-en. Sec. 155, 5th Div. Rev. Stat. 1879; re-en. Sec. 212, 5th Div. Comp. Stat. 1887; amd. Sec. 1650, Civ. C. 1895; re-en. Sec. 4688, Rev. C. 1907; re-en. Sec. 6939, R.C.M. 1921; Cal. Civ. C. Sec. 1227; Field Civ. C. Sec. 535; re-en. Sec. 6939, R.C.M. 1935; R.C.M. 1947, 29-201.

70-20-402. Instrument not void as to purchaser with notice — exception. No instrument is to be avoided under 70-20-401 in favor of a subsequent purchaser or encumbrancer having notice thereof at the time his purchase was made or his lien acquired unless the person in whose favor the instrument was made was a privy to the fraud intended.

History: En. Sec. 2, p. 492, Bannack Stat.; re-en. Sec. 2, p. 392, Cod. Stat. 1871; re-en. Sec. 156, 5th Div. Rev. Stat. 1879; re-en. Sec. 213, 5th Div. Comp. Stat. 1887; amd. Sec. 1651, Civ. C. 1895; re-en. Sec. 4689, Rev. C. 1907; re-en. Sec. 6940, R.C.M. 1921; Cal. Civ. C. Sec. 1228; Field Civ. C. Sec. 536; re-en. Sec. 6940, R.C.M. 1935; R.C.M. 1947, 29-202.

70-20-403. Grant by person with power to revoke — power executed. (1) Where a power to revoke or modify an instrument affecting the title to or enjoyment of an estate in real property is reserved to the grantor or given to any other person, a subsequent grant of or charge upon the estate by the person having the power of revocation in favor of a purchaser or encumbrancer for value operates as a revocation of the original instrument, to the extent of the power, in favor of such purchaser or encumbrancer.

(2) Where a person having a power of revocation, within the provisions of subsection (1) is not entitled to execute it until after the time at which he makes such a grant or charge as described in that subsection, the power is deemed to be executed as soon as he is entitled to execute it.

History: (1)En. Sec. 3, p. 492, Bannack Stat.; re-en. Sec. 3, p. 392, Cod. Stat. 1871; re-en. Sec. 157, 5th Div. Rev. Stat. 1879; re-en. Sec. 214, 5th Div. Comp. Stat. 1887; amd. Sec. 1652, Civ. C. 1895; re-en. Sec. 4690, Rev. C. 1907; re-en. Sec. 6941, R.C.M. 1921; Cal. Civ. C. Sec. 1229; Field Civ. C. Sec. 537; re-en. Sec. 6941, R.C.M. 1935; Sec. 29-203, R.C.M. 1947; (2)En. Sec. 1653, Civ. C. 1895; re-en. Sec. 4691, Rev. C. 1907; re-en. Sec. 6942, R.C.M. 1921; Cal. Civ. C. Sec. 1230; Field Civ. C. Sec. 538; re-en. Sec. 6942, R.C.M. 1935; Sec. 29-204, R.C.M. 1947; R.C.M. 1947, 29-203, 29-204.

70-20-404. Purchaser in good faith not affected. The rights of a purchaser or encumbrancer in good faith and for value are not to be impaired by any of the foregoing provisions of this part.

History: En. Sec. 1654, Civ. C. 1895; re-en. Sec. 4692, Rev. C. 1907; re-en. Sec. 6943, R.C.M. 1921; Field Civ. C. Sec. 539; re-en. Sec. 6943, R.C.M. 1935; R.C.M. 1947, 29-205.

70-20-405. Other provisions on unlawful transfers — where found. Other provisions concerning unlawful transfers are contained in Title 31, chapter 2, part 3, concerning the special relations of debtor and creditor.

History: En. Sec. 1655, Civ. C. 1895; re-en. Sec. 4693, Rev. C. 1907; re-en. Sec. 6944, R.C.M. 1921; Cal. Civ. C. Sec. 1231; Field Civ. C. Sec. 541; re-en. Sec. 6944, R.C.M. 1935; R.C.M. 1947, 29-206; amd. Sec. 10, Ch. 115, L. 1979.

CHAPTER 21

RECORDING TRANSFERS AND OTHER TRANSACTIONS RELATING TO REAL PROPERTY

Part 1 — General Provisions

Section
70-21-101. Instrument defined — abstract.
70-21-102. Unrecorded instruments valid between parties.
70-21-103. Unrecorded deeds — to whom belong.
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Part 2 — Recording—Procedure

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70-21-303. After-acquired interest — effect on notice.
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70-21-308. Power of attorney contained in recorded instrument — how revoked.
70-21-309. Validation of conveyances recorded after defective execution — notice imparted.
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Part 1

General Provisions

70-21-101. Instrument defined — abstract. For the purposes of Title 1, chapter 5, parts 1 through 3; part 2 of this chapter; and 70-21-310, the word instrument shall include an abstract of an instrument which shall be executed and acknowledged or proved by all parties executing the abstracted document and contains:

(1) the names and addresses of the parties thereto;
(2) a description of the real property affected;
(3) a statement that this is an abstract of another document;
(4) a short statement of the effect of the document abstracted;

(5) the name and address of the person who will provide a full and complete copy of the document abstracted, without cost, upon request of any person.

History: En. Sec. 2, Ch. 218, L. 1971; R.C.M. 1947, 73-101.1.

70-21-102. Unrecorded instruments valid between parties. An unrecorded instrument is valid as between the parties and those who have notice thereof.

History: En. Sec. 1644, Civ. C. 1895; re-en. Sec. 4687, Rev. C. 1907; re-en. Sec. 6938, R.C.M. 1921; Cal. Civ. C. Sec. 1217; re-en. Sec. 6938, R.C.M. 1935; R.C.M. 1947, 73-205.

70-21-103. Unrecorded deeds — to whom belong. Instruments essential to the title of real property and which are not kept in a public office as a record pursuant to law belong to the person in whom, for the time being, such title may be vested and pass with the title.

History: En. Sec. 1373, Civ. C. 1895; re-en. Sec. 4568, Rev. C. 1907; re-en. Sec. 6815, R.C.M. 1921; Cal. Civ. C. Sec. 994; Field Civ. C. Sec. 438; re-en. Sec. 6815, R.C.M. 1935; R.C.M. 1947, 67-1113.

70-21-104. Removal of records prohibited — exceptions. The record of a conveyance of real property or any other record, a transcript of which is admissible in evidence, must not be removed from the office where it is kept, except upon the order of a court or judge in cases where the inspection of the record is shown to be essential to the just determination of the cause or proceeding pending or where the court is held in the same building with such office.

History: En. Sec. 3240, C. Civ. Proc. 1895; re-en. Sec. 7953, Rev. C. 1907; re-en. Sec. 10597, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1950; re-en. Sec. 10597, R.C.M. 1935; R.C.M. 1947, 93-1101-20.

Part 2

Recording — Procedure

70-21-201. What may be recorded — recording copy in another county. (1) Any instrument or judgment affecting the title to or possession of real property may be recorded under this part.

(2) When any instrument or judgment affecting the title to or possession of real property situated in more than one county in this state has been recorded in either of such counties, a copy thereof, certified to by the county clerk of the county in which it has been recorded, may be recorded in any other county in this state wherein any portion of the real property affected by such instrument or judgment is situated, and such records will have the same effect as if the original instrument or judgment had been so recorded.

History: En. Sec. 1570, Civ. C. 1895; re-en. Sec. 4643, Rev. C. 1907; amd. Sec. 1, Ch. 28, L. 1919; re-en. Sec. 6890, R.C.M. 1921; Cal. Civ. C. Sec. 1158; Field Civ. C. Sec. 508; re-en. Sec. 6890, R.C.M. 1935; R.C.M. 1947, 73-101.

70-21-202. Certain transfers in trust — mortgages — when to be recorded. Transfers of property in trust for the benefit of creditors and transfers or liens on property by way of mortgage or abstract of such document are required to be recorded in the cases specified in Title 31, chapter

2, on the special relation of debtor and creditor and Title 71 on mortgages, respectively.

History: En. Sec. 1575, Civ. C. 1895; re-en. Sec. 4648, Rev. C. 1907; re-en. Sec. 6895, R.C.M. 1921; Cal. Civ. C. Sec. 1164; Field Civ. C. Sec. 511; re-en..Sec. 6895, R.C.M. 1935; amd. Sec. 4, Ch. 218, L. 1971; R.C.M. 1947, 73-107.

70-21-203. Acknowledgment of instruments required — exceptions. Before an instrument can be recorded, unless it belongs to the class provided for in either 1-5-108, 1-5-109, 70-21-205, or 70-21-207, its execution must be acknowledged by the person executing it or, if executed by a corporation, by its president, vice-president, secretary or assistant secretary, or other person duly authorized by resolution by such corporation executing the same on behalf of the corporation or proved by a subscribing witness or as provided in 1-5-302 and 1-5-303 and the acknowledgment or proof certified in the manner prescribed by Title 1, chapter 5, parts 1 through 3.

History: En. Sec. 1573, Civ. C. 1895; re-en. Sec. 4646, Rev. C. 1907; re-en. Sec. 6893, R.C.M. 1921; Cal. Civ. C. Sec. 1161; Based on Field Civ. C. Sec. 509; amd. Sec. 1, Ch. 16, L. 1931; re-en. Sec. 6893, R.C.M. 1935; amd. Sec. 1, Ch. 170, L. 1937; R.C.M. 1947, 73-105.

70-21-204. Proof of handwriting acceptable for recording — when. An instrument proved and certified pursuant to 1-5-302 and 1-5-303 may be recorded in the proper office if the original is at the same time deposited therein to remain for public inspection, but not otherwise.

History: En. Sec. 1574, Civ. C. 1895; re-en. Sec. 4647, Rev. C. 1907; re-en. Sec. 6894, R.C.M. 1921; Cal. Civ. C. Sec. 1162; Field Civ. C. Sec. 510; re-en. Sec. 6894, R.C.M. 1935; R.C.M. 1947, 73-106.

70-21-205. Acknowledgment unnecessary for recording judgments. Judgments affecting the title to or possession of real property, authenticated by the certificate of the clerk of the court in which such judgments were rendered, may be recorded without acknowledgment or further proof.

History: En. Sec. 1571, Civ. C. 1895; re-en. Sec. 4644, Rev. C. 1907; re-en. Sec. 6891, R.C.M. 1921; Cal. Civ. C. Sec. 1159; re-en. Sec. 6891, R.C.M. 1935; R.C.M. 1947, 73-102.

70-21-206. Recording of return of sale under court decree. Where real estate is sold under a decree of court, return of such sale shall be made and filed in the office of the clerk of court. The clerk shall record the return so made the same as if it were to an execution wherein a levy upon real estate had been made, provided that where the return contains a true copy of the decree of court under which such sale was made, the clerk shall record all of the return except such copy of the decree and, in lieu of recording such copy, shall insert in the record the following:

"The original judgment and decree, the true copy which is set forth in this return, is recorded in judgment book ...., at pages .... to ...., inclusive, thereof."

History: En. Sec. 1, Ch. 42, L. 1927; re-en. Sec. 6891.1, R.C.M. 1935; R.C.M. 1947, 73-103.

70-21-207. Letters patent and other federal and state documents — recording without acknowledgment. Letters patent from the

United States or from the state of Montana or other documents and instruments or duly certified copies thereof issued by or pursuant to the authority of the United States or the state of Montana which evidence title to land or affect the title thereof, executed and authenticated pursuant to existing law, may be recorded without acknowledgment or further proof; and where letters patent have been lost or are beyond the control of any party deraigning title therefrom or for any reason they remain unrecorded, any person claiming title thereunder may cause a transcript of the copy of such letters patent kept by the government issuing the same, duly certified by the officer or individual having lawful custody of such copy, to be recorded in lieu of the original; and such recorded copy shall have prima facie the same force and effect as the original for title or for evidence until the original letters patent be recorded.

History: En. Sec. 1572, Civ. C. 1895; re-en. Sec. 4645, Rev. C. 1907; re-en. Sec. 6892, R.C.M. 1921; Cal. Civ. C. Sec. 1160; re-en. Sec. 6892, R.C.M. 1935; amd. Sec. 1, Ch. 148, L. 1957; R.C.M. 1947, 73-104.

70-21-208. In what county to be recorded. Instruments entitled to be recorded must be recorded by the county clerk of the county in which the real property affected thereby is situated.

History: En. Sec. 1590, Civ. C. 1895; re-en. Sec. 4650, Rev. C. 1907; re-en. Sec. 6898, R.C.M. 1921; Cal. Civ. C. Sec. 1169; Based on Field Civ. C. Sec. 512; re-en. Sec. 6898, R.C.M. 1935; R.C.M. 1947, 73-110.

70-21-209. When instrument considered recorded. An instrument is deemed to be recorded when, being duly acknowledged or proved and certified, it is deposited in the county clerk's office with the proper officer for record.

History: En. Sec. 1591, Civ. C. 1895; re-en. Sec. 4651, Rev. C. 1907; re-en. Sec. 6899, R.C.M. 1921; Cal. Civ. C. Sec. 1170; Based on Field Civ. C. Sec. 513; re-en. Sec. 6899, R.C.M. 1935; R.C.M. 1947, 73-111.

70-21-210. Clerk to endorse fee. The county clerk must in all cases endorse the amount of his fee for recording on the instrument recorded.

History: En. Sec. 1576, Civ. C. 1895; re-en. Sec. 4649, Rev. C. 1907; re-en. Sec. 6896, R.C.M. 1921; Cal. Civ. C. Sec. 1165; re-en. Sec. 6896, R.C.M. 1935; R.C.M. 1947, 73-108.

70-21-211. Record books to be separate. Grants absolute in terms are to be recorded in one set of books and mortgages and securities in the nature of mortgages in another.

History: En. Sec. 1592, Civ. C. 1895; re-en. Sec. 4652, Rev. C. 1907; re-en. Sec. 6900, R.C.M. 1921; Cal. Civ. C. Sec. 1171; re-en. Sec. 6900, R.C.M. 1935; R.C.M. 1947, 73-112.

70-21-212. Other duties of recorder — where found. The duties of county clerks in respect to recording instruments are prescribed by Title 7, chapter 4, part 26.

History: En. Sec. 1593, Civ. C. 1895; re-en. Sec. 4653, Rev. C. 1907; re-en. Sec. 6901, R.C.M. 1921; Cal. Civ. C. Sec. 1172; Based on Field Civ. C. Sec. 514; re-en. Sec. 6901, R.C.M. 1935; R.C.M. 1947, 73-113.

Part 3

Effect of Recording

70-21-301. Conveyance defined. The term "conveyance", as used in 70-21-302 through 70-21-304, embraces every instrument in writing by which any estate or interest in real property is created, aliened, mortgaged, or encumbered or by which the title to real property may be affected, except wills.

History: En. Sec. 1642, Civ. C. 1895; re-en. Sec. 4685, Rev. C. 1907; re-en. Sec. 6936, R.C.M. 1921; Cal. Civ. C. Sec. 1215; Based on Field Civ. C. Sec. 531; re-en. Sec. 6936, R.C.M. 1935; R.C.M. 1947, 73-203.

70-21-302. Recording as constructive notice — effect of recording copy in other county. (1) Every conveyance of real property acknowledged or proved and certified and recorded as prescribed by law, from the time it is filed with the county clerk for record, is constructive notice of the contents thereof to subsequent purchasers and mortgagees.

(2) A certified copy of any such recorded conveyance may be recorded in any other county, and when so recorded the record thereof shall have the same force and effect as though it was of the original conveyance.

History: En. Sec. 259, 5th Div. Comp. Stat. 1887; re-en. Sec. 1640, Civ. C. 1895; re-en. Sec. 4683, Rev. C. 1907; amd. Sec. 1, Ch. 33, L. 1921; re-en. Sec. 6934, R.C.M. 1921; Cal. Civ. C. Secs. 1213, 1218; re-en. Sec. 6934, R.C.M. 1935; amd. Sec. 1, Ch. 147, L. 1967; R.C.M. 1947, 73-201(part).

70-21-303. After-acquired interest — effect on notice. Further, every conveyance and/or encumbrance of real property acknowledged or proved and certified and recorded as prescribed by law and which is executed by one who thereafter acquires an interest in the real property by a conveyance which said conveyance is constructive notice as aforesaid is, from the time such latter conveyance is filed with the county clerk for record, constructive notice of the contents of such earlier conveyance and/or encumbrance to subsequent takers, purchasers, mortgagees, or other encumbrancers or transferees.

History: En. Sec. 259, 5th Div. Comp. Stat. 1887; re-en. Sec. 1640, Civ. C. 1895; re-en. Sec. 4683, Rev. C. 1907; amd. Sec. 1, Ch. 33, L. 1921; re-en. Sec. 6934, R.C.M. 1921; Cal. Civ. C. Secs. 1213, 1218; re-en. Sec. 6934, R.C.M. 1935; amd. Sec. 1, Ch. 147, L. 1967; R.C.M. 1947, 73-201(part).

70-21-304. Conveyance void as against other conveyance recorded first. Every conveyance of real property, other than a lease for a term not exceeding 1 year, is void against any subsequent purchaser or encumbrancer, including an assignee of a mortgage, lease, or other conditional estate, of the same property or any part thereof in good faith and for a valuable consideration whose conveyance is first duly recorded.

History: En. Sec. 260, 5th Div. Comp. Stat. 1887; re-en. Sec. 1641, Civ. C. 1895; re-en. Sec. 4684, Rev. C. 1907; re-en. Sec. 6935, R.C.M. 1921; Cal. Civ. C. Sec. 1214; Based on Field Civ. C. Sec. 530; re-en. Sec. 6935, R.C.M. 1935; R.C.M. 1947, 73-202.

70-21-305. Abstract of conveyance — effect of recording. An abstract of a conveyance or encumbrance of real property, which abstract is acknowledged or proved and certified and recorded as prescribed by law, shall have the same effect for all purposes of this part as if the conveyance or encumbrance of real property had been acknowledged or proved and certified and recorded as prescribed by law.

History: En. Sec. 3, Ch. 218, L. 1971; R.C.M. 1947, 73-201.1.

70-21-306. Recording judgments to impart notice. Every certified copy of a judgment of partition or any other judgment, filed and recorded as provided in 7-4-2613, from the time of filing the same for record imparts notice to all persons of the contents thereof, and subsequent purchasers, mortgagees, and lienholders purchase and take with like notice and effect as if such property or judgment was a duly recorded deed, grant, or transfer.

History: En. Sec. 4415, Pol. C. 1895; re-en. Sec. 3036, Rev. C. 1907; re-en. Sec. 4802, R.C.M. 1921; Cal. Pol. C. Sec. 4239; re-en. Sec. 4802, R.C.M. 1935; R.C.M. 1947, 16-2908.

70-21-307. Effect of conveyance to grantee as trustee when no trust conditions provided. Any conveyance of real property hereafter placed of record in any office of any county clerk and recorder in which the name of the grantee is followed by the word "trustee", "as trustee", or some similar fiduciary term and in which no terms and conditions of such purported trust or any limitation on the power of the grantee to convey shall be set forth so that any person dealing with such real property could learn therefrom what, if any, limitation exists upon the authority of the grantee with regard to the reconveyance or encumbrance of such property shall be considered as though such property had been conveyed to such grantee without any limitation upon his authority to reconvey or encumber as fully as though the word "trustee", "as trustee", or any equivalent fiduciary expression had not been used in connection with his name, and the use of the word "trustee" or "as trustee" or any equivalent fiduciary expression purporting a trust contained in such conveyance shall have no force or effect in charging any purchaser or encumbrancer thereof with notice of any limitation of power on the part of the person so named as trustee to deal with such lands as his own.

History: En. Sec. 1, Ch. 64, L. 1943; R.C.M. 1947, 73-206.

70-21-308. Power of attorney contained in recorded instrument — how revoked. No instrument containing a power to convey or execute instruments affecting real property, which has been recorded, is revoked by any act of the party by whom it was executed unless the instrument containing such revocation is also acknowledged or proved, certified, and recorded in the same office in which the instrument containing the power was recorded.

History: En. Sec. 1643, Civ. C. 1895; re-en. Sec. 4686, Rev. C. 1907; re-en. Sec. 6937, R.C.M. 1921; Cal. Civ. C. Sec. 1216; Based on Field Civ. C. Sec. 532; re-en. Sec. 6937, R.C.M. 1935; R.C.M. 1947, 73-204.

70-21-309. Validation of conveyances recorded after defective execution — notice imparted. (1) Any instrument affecting real property, provided no action is pending as of October 1, 1981, to set such instrument aside, which was, previous to January 1, 1981, recorded in the office of the county clerk and recorder shall be deemed to impart after that date notice of its contents to subsequent purchasers and encumbrancers, notwithstanding any technical defect, omission, or informality in the execution of the instrument or in the certificate of acknowledgment thereof or the absence of any such certificate; but nothing herein shall be deemed to affect the rights of purchasers or encumbrancers previous to January 1, 1981.

(2) Duly certified copies of the record of any such instrument may be read in evidence with like effect as copies of an instrument duly acknowledged and recorded.

History: En. Sec. 1, Ch. 147, L. 1973; R.C.M. 1947, 73-213; amd. Sec. 1, Ch. 476, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "pending as of October 1, 1981" for "now pending" near the beginning of (1); changed "1973" to "1981" after "January 1" near the beginning of (1); substituted "recorded" for "copied into the proper book kept" after "January 1, 1981" near the middle of (1); inserted "technical" after "notwithstanding any" near the middle of (1); deleted language relating to instruments acknowledged by corporate officers after "any such certificate" near the end of (1) (see sec. 1, Ch. 147, L. 1973, for former text); substituted "January 1, 1981" for "that date" at the end of (1).

70-21-310. Validation of recorded instruments omitting address of grantee — notice imparted. (1) Any deed, mortgage, or assignment of mortgage which was, previous to July 1, 1931, copied into the proper book kept in the office of the county clerk and recorder shall be deemed to impart, after July 1, 1931, notice of its contents to subsequent purchasers and encumbrancers notwithstanding the omission therefrom of the post-office address of the grantee, mortgagee, or assignee of the mortgagee, as the case may be; and all such instruments recorded before July 1, 1931, which do not contain the post-office address of the grantee, mortgagee, or assignee of the mortgagee, as the case may be, shall be valid and shall have the same force and effect as though the post-office address of such grantee, mortgagee, or assignee of the mortgagee were contained therein; but nothing herein shall be deemed to affect the rights of purchasers or encumbrancers previous to July 1, 1931.

(2) Duly certified copies of the record of any such instrument may be read in evidence with like effect as certified copies of instruments duly recorded containing the post-office address of the grantee, mortgagee, or assignee of the mortgagee, as the case may be.

History: En. Sec. 1, Ch. 37, L. 1931; re-en. Sec. 6933.1, R.C.M. 1935; R.C.M. 1947, 39-132.

CHAPTER 22

CORNER RECORDATION ACT
SURVEYS AND COORDINATES

Part 1 — Corner Recordation Act

Section
70-22-101. Short title.
70-22-102. Purpose.
70-22-103. Definitions.
70-22-104. Filing of corner record required.
70-22-105. Filing permitted as to any corner or accessory.
70-22-106. Filing of records on corners established before effective date.
70-22-107. Form and contents of record — board to prescribe.
70-22-108. Corner records to be certified.
70-22-109. Duties of county clerk.
70-22-110. Surveyor to rehabilitate monument.

Part 2 — Montana Coordinate System

70-22-201. Coordinate system adopted — designation — division of state into zones.
70-22-202. Designation of system by zone.
70-22-203. Use of x- and y-coordinates.
70-22-204. Description of tract lying across zone boundaries.
70-22-205. Technical description of zones — stations marked on ground.
70-22-206. Proximity to station required for use of coordinates in recorded instrument.
70-22-207. Use of term Montana coordinate system limited.
70-22-208. Public land survey description to prevail.
70-22-209. Purchaser or mortgagee not required to rely on description using system.

Part 1

Corner Recordation Act

70-22-101. Short title. This part may be cited as the "Corner Recordation Act of Montana".

History: En. Sec. 1, Ch. 202, L. 1963; R.C.M. 1947, 67-2001.

70-22-102. Purpose. It is the purpose of this part to protect and perpetuate public land survey corners and information concerning the location of such corners by requiring the systematic establishment of monuments and recording of information concerning the marking of the location of such public land survey corners and to allow the systematic location of other property corners thereby providing for property security and a coherent system of property location and identification of ownerships and thereby eliminating the repeated necessity for reestablishment and relocations of such corners where once they are established and located.

History: En. Sec. 2, Ch. 202, L. 1963; R.C.M. 1947, 67-2002.

70-22-103. Definitions. Except where the context indicates a different meaning, terms used in this part shall be defined as follows:

(1) A "property corner" is a geographic point on the surface of the earth and is on, a part of, and controls a property line.

(2) A "property controlling corner" for a property is a public land survey corner or any property corner which does not lie on a property line of the property in question but which controls the location of one or more of the property corners of the property in question.

(3) A "public land survey corner" is any corner actually established and monumented in an original survey or resurvey used as a basis of legal description for issuing a patent for the land to a private person from the United States government.

(4) A "corner", unless otherwise qualified, means a property corner or a property controlling corner or a public land survey corner or any combination of these.

(5) An "accessory to a corner" is any exclusively identifiable physical object whose spatial relationship to the corner is recorded. Accessories may be bearing trees, bearing objects, monuments, reference monuments, line trees, pits, mounds, charcoal-filled bottles, steel or wooden stakes, or other objects.

(6) A "monument" is an accessory that is presumed to occupy the exact position of a corner.

(7) A "reference monument" is a special monument that does not occupy the same geographical position as the corner itself but whose spatial relationship to the corner is recorded and which serves to witness the corner.

(8) A "registered surveyor" is a surveyor who is registered to practice land surveying under Title 37, chapter 67, and has a paid-up license for that calendar year or who is authorized under Title 37, chapter 67, to practice land surveying.

(9) The "board" is the board of professional engineers and land surveyors, provided for in 2-15-1873.

History: En. Sec. 3, Ch. 202, L. 1963; amd. Sec. 320, Ch. 350, L. 1974; R.C.M. 1947, 67-2003; amd. Sec. 3, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendment: Changed internal reference to the board in (9).

70-22-104. Filing of corner record required. A surveyor shall complete, sign, stamp with his seal, and file with the county clerk and recorder of the county where the corner is situated a written record of corner establishment or restoration to be known as a "corner record" for every public land survey corner and accessory to such corner which is established, reestablished, monumented, remonumented, restored, rehabilitated, perpetuated, or used as control in any survey by such surveyor and within 90 days thereafter unless the corner and its accessories are substantially as described in an existing corner record filed in accordance with the provisions of this part.

History: En. Sec. 4, Ch. 202, L. 1963; R.C.M. 1947, 67-2004.

70-22-105. Filing permitted as to any corner or accessory. A surveyor may file such corner record as to any property corner, property controlling corner, reference monument, or accessory to a corner.

History: En. Sec. 5, Ch. 202, L. 1963; R.C.M. 1947, 67-2005.

70-22-106. Filing of records on corners established before effective date. Corner records may be filed concerning corners established, reestablished, or restored before July 1, 1963.

History: En. Sec. 10, Ch. 202, L. 1963; R.C.M. 1947, 67-2010.

70-22-107. Form and contents of record — board to prescribe. The board shall by regulation provide and prescribe the information which shall be necessary to be included in the corner record, and the board shall prescribe the form in which such corner record shall be presented and filed.

History: En. Sec. 6, Ch. 202, L. 1963; R.C.M. 1947, 67-2006.

70-22-108. Corner records to be certified. No corner record shall be filed unless the same is signed by a registered surveyor and stamped with his seal, or in the case of an agency of the United States government or the state of Montana, the certificate may be signed by the survey party chief making the survey and approved, signed, and sealed by the registered surveyor in responsible charge of the agency.

History: En. Sec. 9, Ch. 202, L. 1963; R.C.M. 1947, 67-2009.

70-22-109. Duties of county clerk. (1) The county clerk and recorder of the county containing the corner shall receive the completed corner record and preserve it in a hardbound book. The books shall be numbered in numerical order as filled.

(2) The clerk shall number the forms in numerical order as they are filed.

(3) The book and page number in which the corner record is filed shall be placed by the clerk near that same corner on a cross-index plat which the clerk shall provide for such a purpose.

(4) The county clerk and recorder shall make these records available for public inspection during all usual office hours.

(5) There is no filing fee.

History: En. Sec. 7, Ch. 202, L. 1963; R.C.M. 1947, 67-2007; amd. Sec. 1, Ch. 143, L. 1981.

Compiler's Comments

1981 Amendment: Deleted former subsection (5) relating to fee determination; added new subsection (5).

70-22-110. Surveyor to rehabilitate monument. In every case where a corner record of a public land survey corner is required to be filed under the provisions of this part, the surveyor must reconstruct or rehabilitate the monument of such corner and accessories to such corner so that the same shall be left by him in such physical condition that it remains as permanent a monument as is reasonably possible and so that the same may be reasonably expected to be located with facility at all times in the future.

History: En. Sec. 8, Ch. 202, L. 1963; R.C.M. 1947, 67-2008.

Part 2

Montana Coordinate System

70-22-201. Coordinate system adopted — designation — division of state into zones. (1) The system of plane coordinates which has been established by the United States coast and geodetic survey for defining and stating the positions or locations of points on the surface of the earth within the state of Montana is hereafter to be known and designated as the "Montana coordinate system".

(2) For the purpose of the use of this system, the state is divided into a north zone and a central zone and a south zone.

(3) The area now included in the following counties shall constitute the north zone: Blaine, Chouteau, Daniels, Flathead, Glacier, Hill, Liberty, Lincoln, Phillips, Pondera, Roosevelt, Sheridan, Teton, Toole, and Valley.

(4) The area now included in the following counties shall constitute the central zone: Cascade, Dawson, Fergus, Garfield, Judith Basin, Lake, Lewis and Clark, McCone, Meagher, Mineral, Missoula, Petroleum, Powell, Prairie, Richland, Sanders, and Wibaux.

(5) The area now included in the following counties shall constitute the south zone: Beaverhead, Big Horn, Broadwater, Carbon, Carter, Custer, Deer Lodge, Fallon, Gallatin, Golden Valley, Granite, Jefferson, Madison, Musselshell, Park, Powder River, Ravalli, Rosebud, Silver Bow, Stillwater, Sweet Grass, Treasure, Wheatland, and Yellowstone.

History: En. Sec. 1, Ch. 232, L. 1965; amd. Sec. 1, Ch. 73, L. 1975; R.C.M. 1947, 67-2011.

70-22-202. Designation of system by zone. (1) As established for use in the north zone, the Montana coordinate system shall be named and in any land description in which it is used it shall be designated the "Montana coordinate system, north zone".

(2) As established for use in the central zone, the Montana coordinate system shall be named and in any land description in which it is used it shall be designated the "Montana coordinate system, central zone".

(3) As established for use in the south zone, the Montana coordinate system shall be named and in any land description in which it is used it shall be designated the "Montana coordinate system, south zone".

History: **En. Sec. 2, Ch. 232, L. 1965; R.C.M. 1947, 67-2012.**

70-22-203. Use of x- and y-coordinates. The plane coordinates of a point on the earth's surface to be used in expressing the position or location of such point in the appropriate zone of this system shall consist of two distances expressed in feet and decimals of a foot. One of these distances, to be known as the "x-coordinate", shall give the position in an east-and-west direction; the other, to be known as the "y-coordinate", shall give the position in a north-and-south direction. These coordinates shall be made to depend upon and conform to the coordinates on the Montana coordinate system of the triangulation and traverse stations of the United States coast and geodetic survey within the state of Montana as those coordinates have been determined by the survey.

History: **En. Sec. 3, Ch. 232, L. 1965; R.C.M. 1947, 67-2013.**

70-22-204. Description of tract lying across zone boundaries. When any tract of land to be defined by a single description extends from one into another of the above coordinate zones, the positions of all points on its boundaries may be referred to either of such zones, the zone which is used being specifically named in the description.

History: **En. Sec. 4, Ch. 232, L. 1965; R.C.M. 1947, 67-2014.**

70-22-205. Technical description of zones — stations marked on ground. (1) For purposes of more precisely defining the Montana coordinate system, the following description by the United States coast and geodetic survey is adopted:

(a) The Montana coordinate system, north zone, is a Lambert conformal projection of the Clarke spheroid of 1866, having standard parallels at north latitudes 47° 51′ and 48° 43′, along which parallels the scale shall be exact. The origin of coordinates is at the intersection of the meridian 109° 30′ west of Greenwich and the parallel 44° 00′ north latitude. This origin is given the coordinates: x = 2,000,000 feet and y = 0 feet.

(b) The Montana coordinate system, central zone, is a Lambert conformal projection of the Clarke spheroid of 1866, having standard parallels at north latitudes 46° 27′ and 47° 53′, along which parallels the scale shall be exact. The origin of coordinates is at the intersection of the meridian 109° 30′ west of Greenwich and the parallel 45° 50′ north latitude. This origin is given the coordinates: x = 2,000,000 feet and y = 0 feet.

(c) The Montana coordinate system, south zone, is a Lambert conformal projection of the Clarke spheroid of 1866, having standard parallels at north latitudes 44° 52′ and 46° 24′, along which parallels the scale shall be exact. The origin of coordinates is at the intersection of the meridian 109° 30′ west of Greenwich and the parallel 47° 00′ north latitude. This origin is given the coordinates: x = 2,000,000 feet and y = 0 feet.

(2) The position of the Montana coordinate system shall be as marked on the ground by triangulation or traverse stations established in conformity with the standards adopted by the United States coast and geodetic survey for first-order and second-order work, whose positions have been rigidly adjusted on the North American datum of 1927 and whose coordinates have been computed on the system herein defined. Any such station may be used for establishing a survey connection with the Montana coordinate system.

History: En. Sec. 5, Ch. 232, L. 1965; amd. Sec. 2, Ch. 73, L. 1975; R.C.M. 1947, 67-2015.

70-22-206. Proximity to station required for use of coordinates in recorded instrument. No coordinates based on the Montana coordinate system purporting to define the position of a point on a land boundary shall be presented to be recorded in any public land records or deed records unless such point is within one-half mile of a triangulation or traverse station established in conformity with the standards prescribed in 70-22-205, provided that said one-half mile limitation may be modified by a duly authorized state agency to meet local conditions.

History: En. Sec. 6, Ch. 232, L. 1965; R.C.M. 1947, 67-2016.

70-22-207. Use of term Montana coordinate system limited. The use of the term "Montana coordinate system" on a map, report of survey, or other document shall be limited to coordinates based on the Montana coordinate system as defined in this part.

History: En. Sec. 7, Ch. 232, L. 1965; R.C.M. 1947, 67-2017.

70-22-208. Public land survey description to prevail. Whenever coordinates based on the Montana coordinate system are used to describe any tract of land which in the same document is also described by reference to any subdivision, line, or corner of the United States public land surveys, the description by coordinates shall be construed as supplemental to the basic description of such subdivision, line, or corner contained in the official plats and field notes filed of record, and in the event of any conflict, the description by reference to the subdivision, line, or corner of the United States public land surveys shall prevail over the description by coordinates.

History: En. Sec. 8, Ch. 232, L. 1965; R.C.M. 1947, 67-2018.

70-22-209. Purchaser or mortgagee not required to rely on description using system. Nothing contained in this part shall require any purchaser or mortgagee to rely on a description, any part of which depends exclusively upon the Montana coordinate system.

History: En. Sec. 9, Ch. 232, L. 1965; R.C.M. 1947, 67-2019.

CHAPTER 23

UNIT OWNERSHIP ACT — CONDOMINIUMS

Part 1 — General Provisions

Section
70-23-101. Short title.
70-23-102. Definitions.

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Part 1

General Provisions

70-23-101. Short title. This chapter may be cited as the "Unit Ownership Act".

History: En. Sec. 1, Ch. 120, L. 1965; R.C.M. 1947, 67-2301.

70-23-102. Definitions. In this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Association of unit owners" means all the unit owners acting as a group in accordance with the declaration and bylaws.

(2) "Building" means a multiple-unit building or buildings comprising a part of the property.

(3) "Common elements" means the general common elements and the limited common elements.

(4) "Common expenses" means:

(a) expenses of administration, maintenance, repair, or replacement of the common elements;

(b) expenses agreed upon as common by all the unit owners; and

(c) expenses declared common by 70-23-610 and 70-23-612 or by the declaration or the bylaws of the particular condominium.

(5) "Condominium" means the ownership of single units with common elements located on property submitted to the provisions of this chapter.

(6) "Declaration" means the instrument by which the property is submitted to the provisions of this chapter.

(7) "Department" means the department of commerce.

(8) "General common elements", unless otherwise provided in a declaration or by consent of all the unit owners, means:

(a) the land on which the building is located, except any portion thereof included in a unit or made a limited common element by the declaration;

(b) the foundations, columns, girders, beams, supports, mainwalls, roofs, halls, corridors, lobbies, stairs, fire escapes, entrances, and exits of the building;

(c) the basements, yards, gardens, parking areas, and outside storage spaces, private pathways, sidewalks, and private roads;

(d) installations of central services such as power, light, gas, hot and cold water, heating, refrigeration, air conditioning, waste disposal, and incinerating;

(e) the elevators, tanks, pumps, motors, fans, compressors, ducts, and in general all apparatus and installations existing for common use;

(f) the premises for the lodging of janitors or caretakers of the property; and

(g) all other elements of the building necessary or convenient to its existence, maintenance, and safety or normally in common use.

(9) "Limited common elements" means those common elements designated in the declaration or by agreement of all the unit owners as reserved for the use of a certain unit or number of units to the exclusion of the other units.

(10) "Majority" or "majority of the unit owners", unless otherwise provided in the declaration, means the owners of more than 50% in the aggregate of the undivided ownership interests in the general common elements as the percentage of interest in such element appertaining to each unit is expressed in the declaration. Whenever a percentage of the unit owners is specified, percentage means such percentage in the aggregate of such undivided ownership.

(11) "Manager" means the manager, board of managers, or other person in charge of the administration of or managing the property.

(12) "Project" means a real estate condominium project, a plan whereby a condominium of two or more units located on property submitted to the provisions of this chapter are offered or proposed to be offered for sale.

(13) "Property" means the land, all buildings, improvements, and structures thereon and all easements, rights, and appurtenances belonging thereto which are submitted to the provisions of this chapter.

(14) "Recording officer" means the county officer charged with the duty of filing and recording deeds and mortgages or any other instruments or documents affecting the title to real property.

(15) "Unit" means a part of the property including one or more rooms occupying one or more floors or a part or parts thereof intended for any type of independent use and with a direct exit to a public street or highway or to a common area or area leading to a public street or highway.

(16) "Unit designation" means the number, letter, or combination thereof designating a unit in the declaration.

(17) "Unit owner" means the person owning a unit in fee simple absolute individually or as co-owner in any real estate tenancy relationship recognized under the laws of this state. However, for all purposes, including the exercise of voting rights, provided by lease filed with the presiding officer of the association of unit owners, a lessee of a unit shall be considered a unit owner.

History: En. Sec. 2, Ch. 120, L. 1965; amd. Sec. 1, Ch. 150, L. 1973; R.C.M. 1947, 67-2302; amd. Sec. 2, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department of commerce" for "department of business regulation" in (7).

70-23-103. Applicability — submission by declaration required. In order to submit any property to the provisions of this chapter, the sole owner or sole lessee or all of the owners or all of the lessees thereof shall execute, acknowledge, and record a declaration in the office of the recording officer of the county in which the property is located. The declaration shall be executed in accordance with 70-23-301.

History: En. Sec. 3, Ch. 120, L. 1965; amd. Sec. 2, Ch. 150, L. 1973; R.C.M. 1947, 67-2303.

Part 2

Regulation of Unit Sales Prior to Construction

70-23-201. Disposition of funds from purchase or lease of unit prior to completion of construction. (1) If units are conveyed or leased prior to the completion of construction of the building within which such unit is located and all of the general common elements of the project (except those general common elements forming a part of a separate building enclosing other units) as set forth in the declaration filed pursuant to 70-23-301, all moneys from the sale of the units including any payments made on loan commitments from lending institutions shall be deposited in escrow by the developer in a fund with a bank, savings and loan association, or company authorized to do business in the state under an escrow arrangement.

(2) No disbursements may be made from such fund until the completion of the building and general common elements or until compliance with the provisions of 70-23-202 through 70-23-206, whichever comes first.

(3) If no disbursements are made until after the building and general common elements have been completed, the developer need not comply with 70-23-202 through 70-23-206.

(4) If 70-23-202 through 70-23-206 have been complied with, disbursements from such fund may be made from time to time to pay for construction costs of the building in proportion to the valuation of the work completed by the contractor as certified by a registered architect or registered professional engineer and for architectural, engineering, finance, and legal fees and for other incidental expenses of the condominium project as approved by the mortgagee. The balance of the moneys remaining in the fund shall be disbursed only upon completion of the building, free and clear of all mechanic's and materialman's liens. The department may impose other restrictions relative to the retention and disbursement of the fund.

History: En. 67-2303.1 by Sec. 3, Ch. 150, L. 1973; R.C.M. 1947, 67-2303.1.

70-23-202. Notice of intention to sell by developer — fees. (1) The developer of a project shall notify the department in writing prior to the time the project or units thereof are to be offered for sale.

(2) The notice of intention to sell shall fully disclose all material facts on a form prescribed by the department.

(3) The fee for filing the notice of intention is $50. For the inspection of the project and examination of the accounts and records of the developer, the department may require the developer to pay the costs thereof, not to exceed

the sum of $100 for each day actually required to perform such duties, but in no event shall the total charges exceed the sum of $500.

History: En. 67-2303.2 by Sec. 4, Ch. 150, L. 1973; R.C.M. 1947, 67-2303.2.

70-23-203. Examination of project by department after notice of intent to sell — report. (1) After receipt of the notice of intention to sell, the department shall inspect the project and examine the accounts and records of the developer.

(2) The department shall make a report of its inspection which shall contain all material facts reasonably available and which shall be on file and available for public inspection in the office of the director.

(3) The department may issue a preliminary report if the notice of intention is incomplete in some respect but the department is satisfied that the report will adequately disclose all material facts which a prospective purchaser should consider and that adequate protection for purchasers' funds has been provided.

(4) A developer may not use a preliminary report to contract for the sale of a unit unless he files the notice of intention to sell, a specimen copy of the proposed contract of sale, and an executed copy of an escrow agreement with a depository in accordance with 70-23-201.

History: En. 67-2303.3 by Sec. 5, Ch. 150, L. 1973; R.C.M. 1947, 67-2303.3.

70-23-204. Refund of purchaser's funds for change in building plans — final report. (1) The funds of any purchaser obtained prior to issuance of final reports shall be refunded if there is any change in the condominium building plans subsequent to execution of the contract requiring approval of a city or county officer having jurisdiction over issuance of permits for construction of buildings unless the purchaser's written acceptance of the specific change is obtained.

(2) Rights under contracts of sale of condominium units under a preliminary report are not enforceable against purchasers until purchasers have had a full opportunity to read the department's final report on the project and to obtain a refund of any moneys paid as well as a release from all obligations if the final report differs in any material respect from the preliminary report.

(3) If the final report is not issued within 1 year from the date of issuance of the preliminary report, purchasers are entitled to refund of all moneys paid by the purchasers thereunder without further obligation.

History: En. 67-2303.4 by Sec. 6, Ch. 150, L. 1973; R.C.M. 1947, 67-2303.4; amd. Sec. 11, Ch. 115, L. 1979.

70-23-205. Final report prior to completion of project — supplementary report. (1) The department may not issue a final report prior to completion of construction of a project unless:

(a) there is filed with the department:

(i) a verified statement showing all costs involved in completing the project, including land, ground lease payments, and equipment lease payments, real property taxes, construction costs, architect, engineering, and attorneys' fees, financing costs, provisions for contingency, and other costs which must be paid on or before the completion of construction of the building;

(ii) a verified estimate of the time of completion of construction of the total project;

(iii) satisfactory evidence of sufficient funds to cover the total project cost from purchasers' funds, equity funds, interim or permanent loan commitments, or other sources;

(iv) a copy of the executed construction contract;

(v) satisfactory evidence of a performance bond of not less than 100% of the cost of construction with a reliable surety company;

(vi) if purchasers' funds are to be used for construction, an executed copy of the escrow agreement for the escrow fund required under 70-23-201 for financing construction, which shall expressly provide for:

(A) no disbursements by the escrow agent for payment of construction costs unless bills are submitted with the request for such disbursements which have been approved or certified for payment by the mortgagee or a financially disinterested person; and

(B) no disbursements from the balance of the escrow fund after payment of construction costs pursuant to subsection (A) until the escrow agent receives satisfactory evidence that all mechanics' and materialmen's liens have been cleared, unless sufficient funds are set aside for any bona fide dispute;

(b) the declaration provided for in 70-23-301 has been filed.

(2) If after a final report has been issued any circumstance occurs which would render the final report misleading as to purchasers or if the developer proposes to materially change the project, the developer shall stop all sales and immediately submit sufficient information to the department to enable it to issue a supplementary report describing the changes. Sales shall not resume until the supplementary report has been issued.

History: En. 67-2303.5 by Sec. 7, Ch. 150, L. 1973; R.C.M. 1947, 67-2303.5.

70-23-206. No binding contract until purchaser has received final report. (1) The developer or any other person offering any unit in a condominium project prior to completion of its construction shall not enter into a binding contract or agreement for the sale or resale thereof until:

(a) a true copy of the department's final report thereon with all supplementary reports has been given to the prospective purchaser;

(b) the prospective purchaser has been given an opportunity to read the reports; and

(c) the prospective purchaser executes a receipt for the reports.

(2) Receipts taken for any report shall be kept on file in possession of the developer, subject to inspection at a reasonable time by the department for a period of 3 years from the date the receipt was taken.

History: En. 67-2303.6 by Sec. 8, Ch. 150, L. 1973; R.C.M. 1947, 67-2303.6.

Part 3

Creation — Declaration and Bylaws

70-23-301. Contents of declaration. A declaration shall contain:

(1) a description of the land, whether leased or in fee simple, on which the building is or is to be located;

(2) the name by which the property shall be known and a general description of the building, including the number of stories and basements, the number of units, and the principal materials of which it is constructed;

(3) the unit designation, location, approximate area of each unit, and any other data necessary for proper identification;

(4) a description of the general common elements and the percentage of the interest of each unit owner therein;

(5) a description of the limited common elements, if any, stating to which units their use is reserved and in what percentage;

(6) a statement of the use for which the building and each of the units is intended;

(7) the name of a person to receive service of process in the cases provided in 70-23-901 and the residence or place of business of such person which shall be within the county in which the property is located;

(8) any other details regarding the property that the person executing the declaration considers desirable.

History: En. Sec. 14, Ch. 120, L. 1965; amd. Sec. 11, Ch. 150, L. 1973; R.C.M. 1947, 67-2314.

70-23-302. Preliminary declaration. A preliminary declaration, setting forth as many of the particulars required by 70-23-301 as may then be practicable, may be recorded before construction of the building described in the declaration is completed. The preliminary declaration shall not relieve the owner from the necessity of filing the declaration as required by 70-23-301.

History: En. Sec. 15, Ch. 120, L. 1965; R.C.M. 1947, 67-2315.

70-23-303. Name of property — similarity prohibited. No property shall bear a name using a word which is the same as, similar to, or pronounced the same as a word in the name of any other property or subdivision in the same county, except for the words “apartment”, “motel”, “building”, “court”, “place”, or similar words.

History: En. Sec. 16, Ch. 120, L. 1965; R.C.M. 1947, 67-2316.

70-23-304. Declaration to be approved by department of revenue before recording. Before a declaration may be recorded, it must be approved by the agent of the department of revenue in the county in which the property is located. No declaration shall be approved unless:

(1) the name is proper so as to comply with 70-23-303; and

(2) all taxes and assessments due and payable have been paid.

History: En. Sec. 17, Ch. 120, L. 1965; amd. Sec. 40, Ch. 391, L. 1973; R.C.M. 1947, 67-2317.

70-23-305. Recording of declaration. (1) When a declaration is made and approved as required, it shall, upon the payment of the fees provided by law, be recorded by the recording officer. The fact of recording and the date thereof shall be entered thereon.

(2) At the time of recording a declaration, the person offering it for record shall also file an exact copy, certified by the recording officer to be a true copy thereof, with the department of revenue or its agent in the county in which the property is located.

History: En. Sec. 18, Ch. 120, L. 1965; amd. Sec. 41, Ch. 391, L. 1973; R.C.M. 1947, 67-2318.

70-23-306. Floor plans recorded with declaration — certification. (1) Floor plans of the building described in a declaration shall be recorded simultaneously with the declaration. The floor plans shall show the layout of each unit, including the unit designation, location and dimensions of each unit, and the common areas to which each has access.

(2) There shall be attached to the floor plans a statement of the registered architect or registered professional engineer who prepared the floor plans, certifying that the plans are an accurate copy of the plans filed with and approved by the city and county officers having jurisdiction to issue building permits. If the plans do not include a verified statement by the architect or engineer that the plans fully and accurately depict the layout, location, unit designation, and dimensions of each unit as built, there shall be recorded within 30 days from the date of completion of the building or from the date of the first occupancy of the building, whichever first occurs, an amendment to the declaration to which shall be attached a verified statement of a registered architect or registered professional engineer certifying that the floor plans previously filed or being filed simultaneously with the amendment fully and accurately depict the layout of the units and floors of the building and the date construction of the building was completed.

History: En. Sec. 19, Ch. 120, L. 1965; amd. Sec. 12, Ch. 150, L. 1973; R.C.M. 1947, 67-2319.

70-23-307. Bylaws — adoption, recording, and amendment. (1) The unit owners of each property shall adopt bylaws to govern the administration of the property.

(2) A copy of the bylaws, certified by the presiding officer and secretary of the association, shall be recorded simultaneously with the declaration of the property to which the bylaws relate.

(3) An amendment of the bylaws shall not be effective unless approved by 75% of the unit owners and until a copy of the bylaws, as amended, certified by the presiding officer and secretary of the association of unit owners, is recorded.

History: En. Sec. 20, Ch. 120, L. 1965; R.C.M. 1947, 67-2320.

70-23-308. Contents of bylaws. The bylaws shall provide for:

(1) the election from among the unit owners of a board of directors, the number of persons constituting the board, and that the terms of at least one-third of the directors shall expire annually; the powers and duties of the board; the compensation, if any, of the directors; the method of removal from office of the directors; and whether or not the board may engage the services of a manager or managing agent;

(2) the method of calling meetings of the unit owners and the percentage, if other than a majority as defined by 70-23-102(10), that shall constitute a quorum;

(3) the election of a chairman, a secretary, and a treasurer;

(4) the maintenance, upkeep, and repair of the common elements and payment for the expense thereof, including the method of approving payment vouchers;

(5) the employment of personnel necessary for the maintenance, upkeep, and repair of the common elements;

(6) the manner of collecting from the unit owners their share of the common expenses;

(7) the method of adopting and of amending administrative rules governing the details of the operation and use of the common elements;

(8) such restrictions on and requirements respecting the use and maintenance of the units and the use of the common elements, not included in the declaration, as are designed to prevent unreasonable interference with the use of their respective units and of the common elements by the several unit owners;

(9) the method of amending the bylaws subject to 70-23-307.

History: **En. Sec. 21, Ch. 120, L. 1965; R.C.M. 1947, 67-2321.**

Part 4

Nature of the Ownership Interest

70-23-401. Property status of the unit. While the property is submitted to this chapter, a unit in the building may be individually conveyed, leased, or encumbered and may be the subject of ownership, possession, or sale and of all types of juridic acts inter vivos or mortis causa as if it were sole and entirely independent of the other units in the building of which they form a part, and the corresponding individual titles and interests shall be recordable.

History: **En. Sec. 4, Ch. 120, L. 1965; amd. Sec. 9, Ch. 150, L. 1973; R.C.M. 1947, 67-2304.**

70-23-402. Exclusive ownership and possession of unit — joint ownership. (1) Each unit owner shall be entitled to the exclusive ownership and possession of his unit.

(2) A unit may be jointly or commonly owned by more than one person.

History: **En. Sec. 5, Ch. 120, L. 1965; amd. Sec. 10, Ch. 150, L. 1973; R.C.M. 1947, 67-2305.**

70-23-403. Common elements — undivided interest of unit owner. (1) Each unit owner shall be entitled to an undivided interest in the common elements in the percentage expressed in the declaration. Such percentage shall be in the approximate relation that the value of the unit at the date of the declaration bears to the then combined value of all the units having an interest in the particular common elements. Value need not conform to market value.

(2) The percentage of undivided interest of each unit owner in the common elements as expressed in a declaration shall not be altered unless all unit owners having an interest in the particular common element agree thereto and record an amendment to the declaration setting forth the altered percentage of each unit owner having an interest.

History: **En. Sec. 6, Ch. 120, L. 1965; R.C.M. 1947, 67-2306.**

70-23-404. Common elements — undivided interest to remain attached to unit. The undivided interest in the common elements shall not be separated from the unit to which it appertains and shall be conveyed or encumbered with the unit even though such interest is not expressly mentioned or described in the conveyance or other instrument.

History: **En. Sec. 7, Ch. 120, L. 1965; R.C.M. 1947, 67-2307(1).**

70-23-405. Common elements to remain undivided — partition prohibited. The common elements shall remain undivided, and no unit owner shall bring any action for partition or division of any part thereof except as provided in 70-23-805. Any convenant to the contrary is void.

History: En. Sec. 7, Ch. 120, L. 1965; R.C.M. 1947, 67-2307(2).

Part 5

Rights and Duties Incidental to Unit Ownership

70-23-501. Common profits and expenses. The common profits of the property shall be distributed among and the common expenses shall be charged to the unit owners according to the percentage of undivided interest of each in the common elements.

History: En. Sec. 8, Ch. 120, L. 1965; R.C.M. 1947, 67-2308.

70-23-502. Certain work on unit by owner prohibited. A unit owner shall make no repair or alteration or perform any other work on his unit which would jeopardize the soundness or safety of the property, reduce the value thereof, or impair any easement or hereditament unless the consent of all the other unit owners affected is first obtained.

History: En. Sec. 9, Ch. 120, L. 1965; R.C.M. 1947, 67-2309.

70-23-503. Common elements — use by unit owner. Each unit owner may use the common elements in accordance with the purposes for which they are intended but may not hinder or encroach upon the lawful rights of the other unit owners.

History: En. Sec. 10, Ch. 120, L. 1965; R.C.M. 1947, 67-2310.

70-23-504. Maintenance and improvement of common elements. (1) The necessary work of maintenance, repair, and replacement of the common elements and additions or improvements to the common elements shall be carried out only as provided in the bylaws.

(2) The association of unit owners shall have the right, to be exercised by the manager, to have access to each unit as may be necessary for the maintenance, repair, or replacement of the common elements or to make emergency repairs therein necessary for the public safety or to prevent damage to the common elements or to another unit.

History: En. Sec. 11, Ch. 120, L. 1965; R.C.M. 1947, 67-2311.

70-23-505. Abandonment or waiver of use not to effect exemption. No unit owner may exempt himself from liability for his contribution towards the common expenses by waiver of the use or enjoyment of any of the common elements or by abandonment of his unit.

History: En. Sec. 12, Ch. 120, L. 1965; R.C.M. 1947, 67-2312.

70-23-506. Compliance with bylaws, rules, and covenants required — action. Each unit owner shall comply with the bylaws and with the administrative rules adopted pursuant thereto and with the covenants, conditions, and restrictions in the declaration or in the deed to his unit. Failure to comply therewith shall be grounds for an action maintainable by the association of unit owners or by an aggrieved unit owner.

History: En. Sec. 13, Ch. 120, L. 1965; R.C.M. 1947, 67-2313.

Part 6

Conveyances, Liens, and Common Expenses

70-23-601. Contents of deed or lease of unit. The deed or lease of a unit shall contain:

(1) a description of the land, the name of the property, and the recording index numbers and date of recording of the declaration;
(2) the unit designation of the unit;
(3) the use for which the unit is intended;
(4) the percentages of undivided interest in the common elements appertaining to the unit;
(5) any further details the grantor and grantee or lessor and lessee may consider desirable.

History: **En. Sec. 22, Ch. 120, L. 1965; amd. Sec. 13, Ch. 150, L. 1973; R.C.M. 1947, 67-2322.**

70-23-602. Liens to be satisfied or released at time of first conveyance. At the time of the first conveyance or lease of each unit following the recording of the declaration, every mortgage and other lien affecting such unit, including the undivided interest of the unit in the common elements, shall be paid and satisfied of record or the unit being conveyed or leased and its interest in the common elements shall be released therefrom by partial release duly recorded.

History: **En. Sec. 23, Ch. 120, L. 1965; amd. Sec. 14, Ch. 150, L. 1973; R.C.M. 1947, 67-2323.**

70-23-603. Lien allowable against unit not against the property. Subsequent to recording a declaration and while the property remains subject to this chapter, no lien shall arise or be effective against the property. During such period liens or encumbrances shall arise or be created only against each unit and the undivided interest in the common elements appertaining thereto, in the same manner and under the same conditions as liens or encumbrances may arise or be created upon or against any other separate parcel of real property subject to individual ownership.

History: **En. Sec. 24, Ch. 120, L. 1965; R.C.M. 1947, 67-2324(1).**

70-23-604. Mechanic's or materialman's lien — no effect on nonconsenting owner — exception. No labor performed or materials furnished with the consent or at the request of a unit owner, his agent, contractor, or subcontractor shall be the basis for the filing of a mechanic's or materialman's lien against the unit of any other unit owner not consenting to or requesting the labor to be performed or the materials to be furnished, except that consent shall be considered given by the owner of any unit in the case of emergency repairs thereto performed or furnished with the consent or at the request of the manager.

History: **En. Sec. 24, Ch. 120, L. 1965; R.C.M. 1947, 67-2324(2).**

70-23-605. Lien effective against two or more units — release from. If a lien becomes effective against two or more units, the owner of each unit subject to such a lien shall have the right to have his unit released from the lien by payment of the amount of the lien attributable to his unit. The amount of the lien attributable to a unit and the payment required to satisfy such a lien, in the absence of agreement, shall be determined by application of the percentage established in the declaration. Such partial payment, satisfaction, or discharge shall not prevent the lienor from proceeding to enforce his rights against any unit and the undivided interest in the common element appertaining thereto not so released by payment, satisfaction, or discharge.

History: En. Sec. 24, Ch. 120, L. 1965; R.C.M. 1947, 67-2324(3).

70-23-606. Records of receipts and expenditures affecting common elements — inspection. (1) The manager shall keep detailed accurate records in chronological order of the receipts and expenditures affecting the common elements, itemizing the maintenance and repair expenses of the common elements and any other expenses incurred.

(2) Such records and the vouchers authorizing the payments shall be available for examination by the unit owners at convenient hours of weekdays.

History: En. Sec. 25, Ch. 120, L. 1965; R.C.M. 1947, 67-2325.

70-23-607. Claim for common expenses — priority of lien — contents — recording. (1) Whenever an association of unit owners acting through its manager furnishes to a unit any services, labor, or material lawfully chargeable as common expenses, the association of unit owners, upon complying with subsection (2) of this section, shall have a lien upon the individual unit and the undivided interest in the common elements appertaining to such unit for the reasonable value of such common expenses, and the lien shall be prior to all other liens or encumbrances upon the unit except:

(a) tax and assessment liens; and

(b) a first mortgage or trust indenture of record.

(2) An association of unit owners claiming the benefits of subsection (1) of this section shall record in the county in which the unit or some part thereof is located a claim containing:

(a) a true statement of the account due for such common expenses after deducting all just credits and offsets;

(b) the name of the owner of the unit or reputed owner, if known;

(c) a description of the property where the common expenses were furnished and the designation of the unit, sufficient for identification.

(3) The claim shall be verified by the oath of some person having knowledge of the facts and shall be filed with and recorded by the recording officer in the book kept for the purpose of recording liens filed under 71-3-501. The record shall be indexed as deeds and other conveyances are required by law to be indexed.

History: En. Sec. 26, Ch. 120, L. 1965; R.C.M. 1947, 67-2326.

70-23-608. Foreclosure of lien under claim for common expenses — action without foreclosure. (1) The proceedings to foreclose liens created by 70-23-607 shall conform as nearly as possible to the proceedings to foreclose liens created by 71-3-501. The lien may be enforced by the manager acting on behalf of the association of unit owners.

(2) An action to recover a money judgment for unpaid common expenses may be maintained without foreclosing or waiving the lien securing the claim for common expenses.

History: En. Sec. 27, Ch. 120, L. 1965; R.C.M. 1947, 67-2327.

70-23-609. Foreclosure on unit — payment of rent — purchase of unit by manager. (1) In any foreclosure suit against a unit, the unit owner shall be required to pay a reasonable rental for the unit if so provided in the bylaws, and the plaintiff in such foreclosure shall be entitled to the appointment of a receiver to collect the rent.

(2) The manager acting on behalf of the unit owners shall have power, unless prohibited by the declaration, to bid in the unit at the foreclosure sale and to acquire and hold, lease, mortgage, and convey the same.

History: En. Sec. 28, Ch. 120, L. 1965; R.C.M. 1947, 67-2328.

70-23-610. Purchaser at foreclosure sale not totally liable for prior common expenses. Where the purchaser of a unit obtains title to the unit as a result of foreclosure of the first mortgage or trust indenture, such purchaser, his successors, and assigns shall not be liable for any of the common expenses chargeable to such unit which became due prior to the acquisition of title to such unit by such purchaser. Such unpaid share of common expenses shall be a common expense of all the unit owners, including such purchaser, his successors, and assigns.

History: En. Sec. 29, Ch. 120, L. 1965; R.C.M. 1947, 67-2329.

70-23-611. Joint liability of grantor and grantee for unpaid common expenses. In a voluntary conveyance of a unit, the grantee is jointly and severally liable with the grantor for all unpaid charges against the latter for his proportionate share of the common expenses up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. However, upon request of a prospective purchaser, the manager shall make and deliver a statement of the unpaid charges against the prospective grantor, and the grantee in that case is not liable for nor is the unit when conveyed subject to a lien filed thereafter for any unpaid charges against the grantor in excess of the amount therein set forth.

History: En. Sec. 30, Ch. 120, L. 1965; R.C.M. 1947, 67-2330; amd. Sec. 12, Ch. 115, L. 1979.

70-23-612. Insurance of building — premiums as common expenses. (1) The manager as trustee for the unit owners shall, if required by the declaration, the bylaws, or by a majority of the unit owners, insure the building against loss or damage by fire and such other hazards as shall be required, without prejudice to the right of each unit owner to insure his own unit for his own benefit.

(2) The premiums for such insurance on the building are common expenses.

History: En. Sec. 31, Ch. 120, L. 1965; R.C.M. 1947, 67-2331.

Part 7

Taxation and Exemptions

70-23-701. Separate taxation. (1) Each unit with its percentage of undivided interest in the common elements shall be considered a parcel of real property subject to separate assessment and taxation by any taxing unit in like manner as other parcels of real property. Neither the building, the property, nor any of the common elements shall be considered a parcel for purposes of taxation.

(2) In determining the true cash value of a unit with its undivided interest in the common elements, the department of revenue or its agent may use the percentage of undivided interest in the common elements appertaining to a unit as expressed in the declaration.

History: **En. Sec. 40, Ch. 120, L. 1965; amd. Sec. 42, Ch. 391, L. 1973; R.C.M. 1947, 67-2340.**

70-23-702. Exemptions. Exemptions from executions and real property taxes apply to the owner of each unit or to the individual units as the case may be.

History: **En. Sec. 41, Ch. 120, L. 1965; R.C.M. 1947, 67-2341.**

70-23-703. Appraisal and assessment of units — rulemaking. The department of revenue shall have the authority to make rules prescribing methods best calculated to secure uniformity according to law in the appraisal and assessment of units constituting part of a property submitted to the provisions of this chapter.

History: **En. Sec. 42, Ch. 120, L. 1965; amd. Sec. 43, Ch. 391, L. 1973; R.C.M. 1947, 67-2342.**

Part 8

Removal of Property From Unit Ownership Act

70-23-801. Removal from chapter — recorded instrument — consent of lienholders. (1) All of the unit owners may remove a property from the provisions of this chapter by executing and recording an instrument to that effect if the holders of all liens affecting any of the units consent thereto or agree, in either case by instruments duly recorded, that their liens be transferred to the undivided interest of the unit owner in the property after removal from the provisions of this chapter.

(2) The tax collector for any taxing unit having a lien for taxes or assessments shall have authority to consent to such a transfer of any tax or assessment lien.

History: **En. Sec. 32, Ch. 120, L. 1965; R.C.M. 1947, 67-2332.**

70-23-802. Obsolete property — restoration or sale — removal from chapter. Ninety percent of the unit owners may agree that the property is obsolete in whole or in part and whether or not it shall be renewed and restored or sold and the proceeds of sale distributed. If 90% of the unit owners agree to renew and restore the property, the expense thereof shall be paid by all the unit owners as common expenses. If 90% of the unit owners agree to sell the property, the property shall be considered removed from the provisions of this chapter.

History: **En. Sec. 33, Ch. 120, L. 1965; R.C.M. 1947, 67-2333.**

70-23-803. Damage to property — decision not to repair or rebuild — removal from chapter. If within 60 days after the date of the damage to or destruction of all or part of the property the association of unit owners does not decide to repair, reconstruct, or rebuild, the property shall be considered removed from the provisions of this chapter.

History: **En. Sec. 34, Ch. 120, L. 1965; R.C.M. 1947, 67-2334.**

70-23-804. Effect of removal — ownership in common — liens. If the property is removed from the provisions of this chapter, as provided by 70-23-801 through 70-23-803, the property shall be considered owned in common by all the unit owners. The percentage of undivided interest of each unit owner in the property owned in common shall be the same as the percentage of undivided interest previously owned by such owner in the common elements. Liens affecting any unit shall be liens, in accordance with the then existing priorities, against the undivided interest of the unit owner in the property owned in common.

History: **En. Sec. 35, Ch. 120, L. 1965; R.C.M. 1947, 67-2335.**

70-23-805. Effect of removal — subject to partition — sale. If the property is removed from the provisions of this chapter, as provided in 70-23-801 through 70-23-803, it shall be subject to an action for partition at the suit of any unit owner. The net proceeds of sale, together with the net proceeds of the insurance on the property, if any, shall be considered as one fund and shall be divided among the unit owners in proportion to their respective undivided interests after first paying out of the respective shares of the unit owners, to the extent sufficient for the purpose, all liens on the undivided interest in the property owned by each unit owner.

History: **En. Sec. 36, Ch. 120, L. 1965; R.C.M. 1947, 67-2336.**

70-23-806. Removal no bar to resubmission. The removal of the property from the provisions of this chapter shall in no way bar its resubmission.

History: **En. Sec. 37, Ch. 120, L. 1965; R.C.M. 1947, 67-2337.**

Part 9

Actions and Process

70-23-901. Actions — service of process. (1) Actions may be brought on behalf of two or more of the unit owners, as their respective interests may appear, by the manager with respect to any cause of action relating to the common elements or more than one unit.

(2) Service of process on two or more unit owners, in any action relating to the common elements or more than one unit, may be made on the person designated in the declaration to receive service of process or in duplicate on the recording officer of the county in which the declaration is filed. The recording officer shall promptly send a copy of the document served by certified or registered mail to the person designated in the declaration to receive service of process.

(3) At the time of service on the recording officer, the serving party shall pay to the recording officer a fee of $10 which shall be a taxable disbursement.

History: **En. Sec. 38, Ch. 120, L. 1965; R.C.M. 1947, 67-2338.**

in like manner as other parcels of real property. Neither the building, the property, nor any of the common elements shall be considered a parcel for purposes of taxation.

(2) In determining the true cash value of a unit with its undivided interest in the common elements, the department of revenue or its agent may use the percentage of undivided interest in the common elements appertaining to a unit as expressed in the declaration.

History: En. Sec. 40, Ch. 120, L. 1965; amd. Sec. 42, Ch. 391, L. 1973; R.C.M. 1947, 67-2340.

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History: En. Sec. 41, Ch. 120, L. 1965; R.C.M. 1947, 67-2341.

70-23-703. Appraisal and assessment of units — rulemaking. The department of revenue shall have the authority to make rules prescribing methods best calculated to secure uniformity according to law in the appraisal and assessment of units constituting part of a property submitted to the provisions of this chapter.

History: En. Sec. 42, Ch. 120, L. 1965; amd. Sec. 43, Ch. 391, L. 1973; R.C.M. 1947, 67-2342.

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(2) The tax collector for any taxing unit having a lien for taxes or assessments shall have authority to consent to such a transfer of any tax or assessment lien.

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History: **En. Sec. 36, Ch. 120, L. 1965; R.C.M. 1947, 67-2336.**

70-23-806. Removal no bar to resubmission. The removal of the property from the provisions of this chapter shall in no way bar its resubmission.

History: **En. Sec. 37, Ch. 120, L. 1965; R.C.M. 1947, 67-2337.**

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(2) Service of process on two or more unit owners, in any action relating to the common elements or more than one unit, may be made on the person designated in the declaration to receive service of process or in duplicate on the recording officer of the county in which the declaration is filed. The recording officer shall promptly send a copy of the document served by certified or registered mail to the person designated in the declaration to receive service of process.

(3) At the time of service on the recording officer, the serving party shall pay to the recording officer a fee of $10 which shall be a taxable disbursement.

History: **En. Sec. 38, Ch. 120, L. 1965; R.C.M. 1947, 67-2338.**

70-23-902. Change of agent for service of process. If the association of unit owners wishes to designate a person other than the one named in the declaration to receive service of process in the cases provided in 70-23-901, it shall record an amendment to the declaration. The amendment shall be certified by the presiding officer and the secretary of the association of unit owners and shall state the name of the successor with his residence or place of business as required by 70-23-301(7) and that the person named in the amendment was designated by resolution duly adopted by the association of unit owners.

History: **En. Sec. 39, Ch. 120, L. 1965; R.C.M. 1947, 67-2339.**

Part 10

Enforcement and Penalty

70-23-1001. Investigation by department — injunction. If the department has satisfactory evidence to indicate that any person has violated any provision of this chapter, it may conduct an investigation and bring an action for injunction.

History: **En. Sec. 15, Ch. 150, L. 1973; R.C.M. 1947, 67-2343.**

70-23-1002. Penalty. Any person who violates any provision of this chapter or any rule of the department under such sections is guilty of a misdemeanor and shall be punished by a fine not exceeding $1,000 or by imprisonment for not more than 1 year, or both.

History: **En. Sec. 16, Ch. 150, L. 1973; R.C.M. 1947, 67-2344.**

CHAPTER 24

RESIDENTIAL LANDLORD AND TENANT ACT OF 1977

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Part 1

General Provisions

70-24-101. Short title. This chapter may be cited as "The Montana Residential Landlord and Tenant Act of 1977".

History: **En. 42-401 by Sec. 1, Ch. 313, L. 1977; R.C.M. 1947, 42-401.**

70-24-102. Purposes — liberal construction to promote. (1) This chapter shall be liberally construed and applied to promote its underlying purposes and policies.

(2) Underlying purposes and policies of this chapter are to:

(a) simplify, clarify, modernize, and revise the law governing the rental of dwelling units and the rights and obligations of landlords and tenants; and

(b) encourage landlords and tenants to maintain and improve the quality of housing.

History: **En. 42-402 by Sec. 2, Ch. 313, L. 1977; R.C.M. 1947, 42-402.**

70-24-103. General definitions. Subject to additional definitions contained in subsequent sections and unless the context otherwise requires, in this chapter the following definitions apply:

(1) "Action" includes recoupment, counterclaim, setoff suit in equity, and any other proceeding in which rights are determined, including an action for possession.

(2) "Court" means the appropriate district court or the appropriate justice's court.

(3) "Dwelling unit" means a structure or the part of a structure that is used as a home, residence, or sleeping place by a person who maintains a household or by two or more persons who maintain a common household. "Dwelling unit", in the case of a person who rents space in a mobile home park but does not rent the mobile home, means the space rented and not the mobile home itself.

(4) "Good faith" means honesty in fact in the conduct of the transaction concerned.

(5) "Landlord" means the owner, lessor, or sublessor of the dwelling unit or the building of which it is a part and also means a manager of the premises who fails to disclose his managerial position.

(6) "Organization" includes a corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, and any other legal or commercial entity.

(7) "Owner" means one or more persons, jointly or severally, in whom is vested all or part of:

(a) the legal title to property; or

(b) the beneficial ownership and a right to present use and enjoyment of the premises, including a mortgagee in possession.

(8) "Person" includes an individual or organization.

(9) "Premises" means a dwelling unit and the structure of which it is a part, the facilities and appurtenances therein, and the grounds, areas, and facilities held out for the use of tenants generally or promised for the use of a tenant.

(10) "Rent" means all payments to be made to the landlord under the rental agreement.

(11) "Rental agreement" means all agreements, written or oral, and valid rules adopted under 70-24-311 embodying the terms and conditions concerning the use and occupancy of a dwelling unit and premises.

(12) "Roomer" means a person occupying a dwelling unit that does not include a toilet, a bathtub or a shower, a refrigerator, a stove, or a kitchen sink, all of which are provided by the landlord and one or more of these facilities are used in common by occupants in the structure.

(13) "Single family residence" means a structure maintained and used as a single dwelling unit. Notwithstanding that a dwelling unit shares one or more walls with another dwelling unit, it is a single family residence if it has direct access to a street or thoroughfare and shares neither heating facilities, hot water equipment, nor any other essential facility or service with another dwelling unit.

(14) "Tenant" means a person entitled under a rental agreement to occupy a dwelling unit to the exclusion of others.

History: **En. 42-409 by Sec. 9, Ch. 313, L. 1977; R.C.M. 1947, 42-409; amd. Sec. 2, Ch. 417, L. 1979.**

70-24-104. Exclusions from application of chapter. Unless created to avoid the application of this chapter, the following arrangements are not governed by this chapter:

(1) residence at a public or private institution if incidental to detention or the provision of medical, geriatric, educational, counseling, religious, or similar service;

(2) occupancy under a contract of sale of a dwelling unit or the property of which it is a part if the occupant is the purchaser or a person who succeeds to his interest;

(3) occupancy by a member of a fraternal or social organization in the portion of a structure operated for the benefit of the organization;

(4) transient occupancy in a hotel or motel;

(5) occupancy by an owner of a condominium unit or a holder of a proprietary lease in a cooperative;

(6) occupancy under a rental agreement covering premises used by the occupant primarily for commercial or agricultural purposes;

(7) occupancy by an employee of a landlord whose right to occupancy is conditional upon employment in and about the premises; and

(8) occupancy outside a municipality under a rental agreement which includes hunting, fishing, or agricultural privileges along with the use of the dwelling unit.

History: **En. 42-408 by Sec. 8, Ch. 313, L. 1977; R.C.M. 1947, 42-408.**

70-24-105. Supplementary principles of law applicable. Unless displaced by the provisions of this chapter, the principles of law and equity, including the law relating to capacity to contract, mutuality of obligations, principal and agent, real property, public health, safety and fire prevention, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating causes, supplement its provisions.

History: **En. 42-403 by Sec. 3, Ch. 313, L. 1977; R.C.M. 1947, 42-403.**

70-24-106. Construction against implicit repeal. No part of this chapter is to be construed as impliedly repealed by subsequent legislation if that construction can reasonably be avoided.

History: **En. 42-404 by Sec. 4, Ch. 313, L. 1977; R.C.M. 1947, 42-404.**

70-24-107. Territorial application. This chapter applies to, regulates, and determines rights, obligations, and remedies under a rental agreement, wherever made, for a dwelling unit located within this state.

History: **En. 42-407 by Sec. 7, Ch. 313, L. 1977; R.C.M. 1947, 42-407.**

70-24-108. What constitutes notice. (1) A person has notice of a fact if:

(a) he has actual knowledge of it;

(b) in the case of a landlord, it is delivered at the place of business of the landlord through which the rental agreement was made; or

(c) in the case of a landlord or tenant, it is delivered in hand to the landlord or tenant or mailed by registered or certified mail to him at the place held out by him as the place for receipt of the communication or, in the absence of such designation, to his last known address.

(2) Notice received by an organization is effective for a particular transaction from the time it is brought to the attention of the individual conducting that transaction and, in any event, from the time it would have been brought to his attention if the organization had exercised reasonable diligence.

History: **En. 42-412 by Sec. 12, Ch. 313, L. 1977; R.C.M. 1947, 42-412.**

70-24-109. Obligation of good faith. Every duty under this chapter and every act which must be performed as a condition precedent to the exercise of a right or remedy under this chapter imposes an obligation of good faith in its performance or enforcement.

History: **En. 42-410 by Sec. 10, Ch. 313, L. 1977; R.C.M. 1947, 42-410.**

Part 2

Rental Agreements

70-24-201. Rental agreement — terms and conditions. (1) A landlord and a tenant may include in a rental agreement terms and conditions not prohibited by this chapter or other rule or law, including rent, term of the agreement, and other provisions governing the rights and obligations of the parties.

(2) Unless the rental agreement provides otherwise:

(a) the tenant shall pay as rent the fair rental value for the use and occupancy of the dwelling unit as determined by the landlord;

(b) rent is payable at the landlord's address;

(c) periodic rent is payable at the beginning of a term of a month or less and otherwise in equal monthly installments at the beginning of each month;

(d) rent is uniformly apportionable from day to day; and

(e) the tenancy is week to week in the case of a roomer who pays weekly rent and in all other cases month to month.

(3) Rent is payable without demand or notice at the time and place agreed upon by the parties or provided for by subsection (2) of this section.

History: **En. 42-413 by Sec. 13, Ch. 313, L. 1977; R.C.M. 1947, 42-413.**

70-24-202. Prohibited provisions in rental agreements. A rental agreement may not provide that a party:

(1) agrees to waive or forego rights or remedies under this chapter;

(2) authorizes any person to confess judgment on a claim arising out of the rental agreement; or

(3) agrees to the exculpation or limitation of liability resulting from the other party's purposeful misconduct or negligence or to indemnify the other party for that liability or the costs or attorney's fees connected therewith.

History: **En. 42-415 by Sec. 15, Ch. 313, L. 1977; R.C.M. 1947, 42-415(1).**

70-24-203. Agreement not to permit receipt of rent free of obligation. A rental agreement or a document related thereto may not permit the receipt of rent free of the obligation to comply with 70-24-303.

History: **En. 42-416 by Sec. 16, Ch. 313, L. 1977; R.C.M. 1947, 42-416.**

70-24-204. Effect of unsigned or undelivered rental agreement. (1) If the landlord does not sign and deliver a written rental agreement signed and delivered to him by the tenant, acceptance of rent without reservation by the landlord gives the rental agreement the same effect as if it had been signed and delivered by the landlord.

(2) If the tenant does not sign and deliver a written rental agreement signed and delivered to him by the landlord, acceptance of possession and payment of rent without reservation gives the rental agreement the same effect as if it had been signed and delivered by the tenant.

(3) If a rental agreement given effect by the operation of this section provides for a term longer than 1 year, it is effective for only 1 year.

History: En. 42-414 by Sec. 14, Ch. 313, L. 1977; R.C.M. 1947, 42-414.

Part 3

Rights and Duties of the Parties

70-24-301. Duty to disclose name of person responsible. (1) A landlord or a person authorized to enter into a rental agreement on his behalf shall disclose to the tenant in writing at or before the commencement of the tenancy the name and address of:

(a) the person authorized to manage the premises; and

(b) the owner of the premises or a person authorized to act for the owner for the purpose of service of process and receiving notices and demands.

(2) The information required to be furnished by this section shall be kept current and in writing, and this section extends to and is enforceable against any successor landlord, owner, or manager.

(3) A person who fails to comply with subsection (1) becomes an agent of each person who is a landlord for the purpose of:

(a) service of process and receiving notices and demands; and

(b) performing the obligations of the landlord under this chapter and under the rental agreement and expending or making available for that purpose all rent collected from the premises.

History: En. 42-418 by Sec. 18, Ch. 313, L. 1977; R.C.M. 1947, 42-418.

70-24-302. Landlord to deliver possession of dwelling unit. At the commencement of the term, a landlord shall deliver possession of the premises to the tenant in compliance with the rental agreement and 70-24-303. A landlord may bring an action for possession against a person wrongfully in possession.

History: En. 42-419 by Sec. 19, Ch. 313, L. 1977; R.C.M. 1947, 42-419.

70-24-303. Landlord to maintain premises — agreement that tenant perform duties. (1) A landlord shall:

(a) comply with the requirements of applicable building and housing codes materially affecting health and safety in effect at the time of original construction in all dwelling units where construction is completed after July 1, 1977;

(b) make repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition;

(c) keep all common areas of the premises in a clean and safe condition;

(d) maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, including elevators, supplied or required to be supplied by him;

(e) provide and maintain appropriate receptacles and conveniences for the removal of ashes, garbage, rubbish, and other waste incidental to the occupancy of the dwelling unit and arrange for their removal; and

(f) supply running water and reasonable amounts of hot water at all times and reasonable heat between October 1 and May 1, except if the building that includes the dwelling unit is not required by law to be equipped for that purpose or the dwelling unit is so constructed that heat or hot water is generated by an installation within the exclusive control of the tenant.

(2) If the duty imposed by subsection (1)(a) of this section is greater than a duty imposed by subsections (1)(b) through (1)(f), a landlord's duty shall be determined by reference to subsection (1)(a).

(3) A landlord and tenant of a one-, two-, or three-family residence may agree in writing that the tenant perform the landlord's duties specified in subsections (1)(e) and (1)(f) of this section and specified repairs, maintenance tasks, alteration, and remodeling but only if the transaction is entered into in good faith and not for the purpose of evading the obligations of the landlord.

(4) A landlord and tenant of a one-, two-, or three-family residence may agree that the tenant is to perform specified repairs, maintenance tasks, alterations, or remodeling only if:

(a) the agreement of the parties is entered into in good faith and not for the purpose of evading the obligations of the landlord and is set forth in a separate writing signed by the parties and supported by adequate consideration;

(b) the work is not necessary to cure noncompliance with subsection (1)(a) of this section; and

(c) the agreement does not diminish the obligation of the landlord to other tenants in the premises.

History: **En. 42-420 by Sec. 20, Ch. 313, L. 1977; R.C.M. 1947, 42-420.**

70-24-304. Transfer of premises or termination of management — relief from liability. (1) Unless otherwise agreed, a landlord who conveys, in a good faith sale to a bona fide purchaser, premises that include a dwelling unit subject to a rental agreement is relieved of liability under the rental agreement and this chapter as to events occurring after written notice to the tenant of the conveyance. He remains liable to the tenant for all security recoverable by the tenant pursuant to chapter 25 of this title and all prepaid rent.

(2) Unless otherwise agreed, a manager of premises that include a dwelling unit is relieved of liability under the rental agreement and this chapter as to events occurring after written notice to the tenant of the termination of his management.

History: **En. 42-421 by Sec. 21, Ch. 313, L. 1977; R.C.M. 1947, 42-421.**

70-24-305 through 70-24-310 reserved.

70-24-311. Landlord authorized to adopt rules. (1) A landlord may adopt a rule concerning the tenant's use and occupancy of the premises. A rule is enforceable against the tenant only if:

(a) its purpose is to promote the convenience, safety, or welfare of the occupants in the premises, preserve the landlord's property from abusive use, or make a fair distribution of services and facilities held out for the tenants generally;

(b) it is reasonably related to the purpose for which it is adopted;

(c) it applies to all occupants in the premises in a fair manner;

(d) it is sufficiently explicit in its prohibition, direction, or limitation of the tenant's conduct to fairly inform him of what he must or must not do to comply;

(e) it is not for the purpose of evading the obligations of the landlord; and

(f) the tenant has notice of it at the time he enters into the rental agreement or when it is adopted.

(2) If a rule is adopted after a tenant enters into a rental agreement that works a substantial modification of his bargain, it is not valid until 7 days after notice to the tenant in the case of a week to week tenancy or 30 days' notice in the case of tenancies from month to month.

History: En. 42-423 by Sec. 23, Ch. 313, L. 1977; R.C.M. 1947, 42-423.

70-24-312. Access to premises by landlord. (1) A tenant may not unreasonably withhold consent to the landlord or his agent to enter into the dwelling unit in order to inspect the premises, make necessary or agreed repairs, decorations, alterations, or improvements, supply necessary or agreed services, or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workmen, or contractors.

(2) A landlord may enter the dwelling unit without consent of the tenant in case of emergency.

(3) A landlord may not abuse the right of access or use it to harass the tenant. Except in case of emergency or unless it is impracticable to do so, the landlord shall give the tenant at least 24 hours' notice of his intent to enter and may enter only at reasonable times.

(4) A landlord has no other right of access except:

(a) pursuant to court order;

(b) as permitted by 70-24-425 and 70-24-426(2); or

(c) when the tenant has abandoned or surrendered the premises.

History: En. 42-424 by Sec. 24, Ch. 313, L. 1977; R.C.M. 1947, 42-424.

70-24-313 through 70-24-320 reserved.

70-24-321. Tenant to maintain dwelling unit. (1) A tenant shall:

(a) comply with all obligations primarily imposed upon tenants by applicable provisions of building and housing codes materially affecting health and safety;

(b) keep that part of the premises that he occupies and uses as reasonably clean and safe as the condition of the premises permits;

(c) dispose from his dwelling unit all ashes, garbage, rubbish, and other waste in a clean and safe manner;

(d) keep all plumbing fixtures in the dwelling unit or used by the tenant as clean as their condition permits;

(e) use in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, including elevators, in the premises;

(f) conduct himself and require other persons on the premises with his consent to conduct themselves in a manner that will not disturb his neighbors' peaceful enjoyment of the premises; and

(g) use the parts of the premises including the living room, bedroom, kitchen, bathroom, and dining room in a reasonable manner considering the purposes for which they were designed and intended.

(2) A tenant may not destroy, deface, damage, impair, or remove any part of the premises or permit any person to do so.

History: **En. 42-422 by Sec. 22, Ch. 313, L. 1977; R.C.M. 1947, 42-422.**

70-24-322. Tenant to occupy as dwelling unit only — extended absence. (1) Unless otherwise agreed, a tenant shall occupy his dwelling unit only as a dwelling unit.

(2) The rental agreement may require that the tenant notify the landlord of an anticipated extended absence from the premises in excess of 7 days no later than the first day of the extended absence.

History: **En. 42-425 by Sec. 25, Ch. 313, L. 1977; R.C.M. 1947, 42-425.**

Part 4

Remedies

70-24-401. Administration of remedies — enforcement. (1) The remedies provided by this chapter shall be so administered that an aggrieved party may recover appropriate damages. The aggrieved party has a duty to mitigate damages.

(2) A right or obligation declared by this chapter is enforceable by action unless the provision declaring it specifies a different and limited effect.

History: **En. 42-405 by Sec. 5, Ch. 313, L. 1977; R.C.M. 1947, 42-405.**

70-24-402. Settlement of disputed claim or right. A claim or right arising under this chapter or on a rental agreement, if disputed in good faith, may be settled by agreement.

History: **En. 42-406 by Sec. 6, Ch. 313, L. 1977; R.C.M. 1947, 42-406.**

70-24-403. Prohibited provision in rental agreement — unenforceability — damages. (1) A provision prohibited by 70-24-202 included in a rental agreement is unenforceable.

(2) If a party purposefully uses a rental agreement containing provisions known by him to be prohibited, the other party may recover, in addition to his actual damages, an amount up to 3 months' periodic rent.

History: **En. 42-415 by Sec. 15, Ch. 313, L. 1977; R.C.M. 1947, 42-415(2).**

70-24-404. Unconscionability — court discretion to refuse enforcement. (1) If the court, as a matter of law, finds that:

(a) a rental agreement or any provision thereof is unconscionable, the court may refuse to enforce the agreement or enforce the remainder of the agreement without the unconscionable provision to avoid an unconscionable result; or

(b) a settlement in which a party waives or agrees to forego a claim or right under this chapter or under a rental agreement is unconscionable, the court may refuse to enforce the settlement, enforce the remainder of the settlement without the unconscionable provision, or limit the application of any unconscionable provision to avoid an unconscionable result.

(2) If unconscionability is put into issue by a party or by the court upon its own motion, the parties shall be afforded a reasonable opportunity to present evidence as to the setting, purpose, and effect of the rental agreement or settlement to aid the court in making the determination.

History: En. 42-411 by Sec. 11, Ch. 313, L. 1977; R.C.M. 1947, 42-411.

70-24-405. Failure of landlord to deliver possession — tenant's remedies. (1) If the landlord fails to deliver possession of the dwelling unit to the tenant as provided in 70-24-302, rent abates until possession is delivered and the tenant may:

(a) terminate the rental agreement upon at least 5 days' written notice to the landlord and, upon termination, the landlord shall return all prepaid rent and security; or

(b) demand performance of the rental agreement by the landlord and, if the tenant elects, maintain an action for possession of the dwelling unit against the landlord or a person wrongfully in possession and recover the actual damages sustained by him.

(2) If a person's failure to deliver possession is purposeful and not in good faith, an aggrieved party may recover from that person an amount not more than 3 months' periodic rent or treble damages, whichever is greater.

History: En. 42-427 by Sec. 27, Ch. 313, L. 1977; R.C.M. 1947, 42-427.

70-24-406. Failure of landlord to maintain premises — tenant's remedies. (1) Except as provided in this chapter, if there is a noncompliance with 70-24-303 affecting health and safety, the tenant may:

(a) deliver a written notice to the landlord specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than 30 days after receipt of the notice if the breach is not remedied in 14 days. The rental agreement terminates as provided in the notice subject to the following exceptions:

(i) if the breach is remediable by repairs, the payment of damages, or otherwise and the landlord adequately remedies the breach before the date specified in the notice, the rental agreement does not terminate by reason of the breach;

(ii) if substantially the same act or omission which constituted a prior noncompliance of which notice was given recurs within 6 months, the tenant may terminate the rental agreement upon at least 14 days' written notice specifying the breach and the date of termination of the rental agreement;

(iii) the tenant may not terminate for a condition caused by himself, a member of his family, or other persons on the premises with his consent;

(b) make repairs himself that do not cost more than 1 month's rent and deduct the cost from the rent if he has given the landlord notice and he has not made the repairs within a reasonable time.

(2) Except as provided in this chapter, the tenant may recover actual damages and obtain injunctive relief for any noncompliance by the landlord with the rental agreement or 70-24-303.

(3) The remedy provided in subsection (2) of this section is in addition to a right of the tenant arising under subsection (1).

(4) If the rental agreement is terminated, the landlord shall return all security recoverable by the tenant pursuant to chapter 25 of this title.

History: **En. 42-426 by Sec. 26, Ch. 313, L. 1977; R.C.M. 1947, 42-426.**

70-24-407. Damages for minor violations by landlord. If the landlord fails to comply with the rental agreement or 70-24-303 and the reasonable cost of compliance is less than the 1 month's rent, the tenant may recover damages for the breach under 70-24-406(2).

History: **En. 42-428 by Sec. 28, Ch. 313, L. 1977; R.C.M. 1947, 42-428.**

70-24-408. Purposeful or negligent failure to provide essential services — tenant's remedies. (1) If contrary to the rental agreement or 70-24-303 the landlord purposefully or negligently fails to supply heat, running water, hot water, electric, gas, or other essential services, the tenant may give written notice to the landlord specifying the breach and may:

(a) procure reasonable amounts of heat, hot water, running water, electricity, gas, and other essential services during the period of the landlord's noncompliance and deduct their actual and reasonable cost from the rent;

(b) recover damages based upon the diminution in the fair rental value of the dwelling unit; or

(c) procure reasonable substitute housing during the period of the landlord's noncompliance, in which case the tenant is excused from paying rent for the period of the landlord's noncompliance.

(2) If the tenant proceeds under this section, he may not proceed under 70-24-406 or 70-24-407 as to that breach.

(3) Rights of the tenant under this section do not arise until he has given notice to the landlord and the landlord has had a reasonable opportunity to correct the conditions or if the conditions were caused by the act or omission of the tenant, a member of his family, or other person on the premises with his consent.

History: **En. 42-429 by Sec. 29, Ch. 313, L. 1977; R.C.M. 1947, 42-429.**

70-24-409. Fire or casualty damage — rights of tenant. (1) If the dwelling unit or premises are damaged or destroyed by fire or casualty to an extent that enjoyment of the dwelling unit is substantially impaired, the tenant may:

(a) immediately vacate the premises and notify the landlord in writing within 14 days thereafter of his intention to terminate the rental agreement, in which case the rental agreement terminates as of the date of vacating; or

(b) if continued occupancy is lawful, vacate any part of the dwelling unit rendered unusable by the fire or casualty, in which case the tenant's liability for rent is reduced in proportion to the diminution in the fair rental value of the dwelling unit.

(2) This section does not apply when the fire and casualty damage was caused by the purposeful or negligent act of the tenant, the tenant's family, or guests.

(3) If the rental agreement is terminated, the landlord shall return all security recoverable pursuant to chapter 25 of this title and all prepaid rent. Accounting for rent in the event of termination or apportionment shall be made as of the date of the fire or casualty.

History: **En. 42-431 by Sec. 31, Ch. 313, L. 1977; R.C.M. 1947, 42-431.**

70-24-410. Unlawful or unreasonable entry by landlord — tenant's remedies. If the landlord makes an unlawful entry or a lawful entry in an unreasonable manner or makes repeated demands for entry otherwise lawful but which have the effect of unreasonably harassing the tenant, the tenant may either obtain injunctive relief to prevent the recurrence of the conduct or terminate the rental agreement. In either case the tenant may recover actual damages.

History: **En. 42-441 by Sec. 41, Ch. 313, L. 1977; R.C.M. 1947, 42-441(2).**

70-24-411. Unlawful ouster, exclusion, or diminution of service — tenant's remedies. If a landlord unlawfully removes or excludes the tenant from the premises or purposefully diminishes services to the tenant by interrupting or causing the interruption of heat, running water, hot water, electricity, gas, or other essential services, the tenant may recover possession or terminate the rental agreement and, in either case, recover an amount not more than 3 months' periodic rent or treble damages, whichever is greater. If the rental agreement is terminated, the landlord shall return all security recoverable pursuant to chapter 25 of this title and all prepaid rent.

History: **En. 42-432 by Sec. 32, Ch. 313, L. 1977; R.C.M. 1947, 42-432.**

70-24-412 through 70-24-420 reserved.

70-24-421. Action for nonpayment of rent — tenant's counterclaim. (1) In an action for possession based upon nonpayment of the rent or in an action for rent when the tenant is in possession, the tenant may counterclaim for any amount he may recover under the rental agreement or this chapter. The court from time to time may order the tenant to pay into court all or part of the rent accrued and thereafter accruing and shall determine the amount due to each party. The party to whom a net amount is owed shall be paid first from the money paid into court and the balance by the other party. The court may at any time release money paid into the court to either party if the parties so agree or if the court finds a party entitled to the sums released. If no rent remains due after application of this section, judgment shall be entered for the tenant in the action for possession.

(2) In an action for rent when the tenant is not in possession, he may counterclaim as provided in subsection (1) of this section but is not required to pay any rent into court.

History: **En. 42-430 by Sec. 30, Ch. 313, L. 1977; R.C.M. 1947, 42-430.**

70-24-422. Noncompliance of tenant generally — landlord's right of termination — damages — injunction. (1) Except as provided in this chapter, if there is a noncompliance by the tenant with the rental agreement or a noncompliance with 70-24-321 affecting health and safety, the landlord may deliver a written notice to the tenant pursuant to 70-24-108 specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than 14 days after receipt of the notice. If the breach is not remedied within that time, the rental agreement terminates as provided in the notice subject to the following exceptions:

(a) If the breach is remediable by repairs, the payment of damages, or otherwise and the tenant adequately remedies the breach before the date specified in the notice, the rental agreement does not terminate.

(b) If substantially the same act or omission which constituted a prior noncompliance of which notice was given recurs within 6 months, the landlord may terminate the rental agreement upon at least 5 days' written notice specifying the breach and the date of the termination of the rental agreement.

(2) If rent is unpaid when due and the tenant fails to pay rent within 3 days after written notice by the landlord of nonpayment and his intention to terminate the rental agreement if the rent is not paid within that period, the landlord may terminate the rental agreement.

(3) Except as provided in this chapter, the landlord may recover actual damages and obtain injunctive relief for any noncompliance by the tenant with the rental agreement or 70-24-321. If the tenant's noncompliance is purposeful, the landlord may recover treble damages.

History: **En. 42-433 by Sec. 33, Ch. 313, L. 1977; R.C.M. 1947, 42-433.**

70-24-423. Waiver of landlord's right to terminate for breach. Acceptance by the landlord of full payment of rent due with knowledge of a tenant's default or acceptance by the landlord of a tenant's performance that varies from the terms of the rental agreement constitutes a waiver of the landlord's right to terminate the rental agreement for that breach unless otherwise agreed after the breach has occurred. The acceptance of partial payment of rent due does not constitute a waiver of any right.

History: **En. 42-436 by Sec. 36, Ch. 313, L. 1977; R.C.M. 1947, 42-436.**

70-24-424. Refusal of access — landlord's remedies. If the tenant refuses to allow lawful access, the landlord may either obtain injunctive relief to compel access or terminate the rental agreement. In either case the landlord may recover actual damages.

History: **En. 42-441 by Sec. 41, Ch. 313, L. 1977; R.C.M. 1947, 42-441(1).**

70-24-425. Failure of tenant to maintain dwelling — landlord's right to enter and repair. If there is noncompliance by the tenant with 70-24-321 affecting health and safety that can be remedied by repair, replacement of a damaged item, or cleaning and the tenant fails to comply as promptly as conditions require in case of emergency or within 14 days after written notice by the landlord specifying the breach and requesting that the tenant remedy it within that period of time, the landlord may enter the dwelling unit and cause the work to be done in a workmanlike manner and submit an itemized bill for the actual and reasonable cost, the fair and reasonable cost, or the fair and reasonable value thereof as rent on the next date periodic rent is due or, if the rental agreement has terminated, for immediate payment.

History: En. 42-434 by Sec. 34, Ch. 313, L. 1977; R.C.M. 1947, 42-434.

70-24-426. Remedies for absence or abandonment. (1) If the rental agreement requires the tenant to give notice to the landlord of an anticipated extended absence in excess of 7 days, as provided for in 70-24-322, and the tenant fails to do so, the landlord may recover actual damages from the tenant.

(2) During an absence of the tenant in excess of 7 days, the landlord may enter the dwelling unit at times reasonably necessary.

(3) If the tenant abandons the dwelling unit, the landlord shall make reasonable efforts to rent it at a fair rental. If the landlord rents the dwelling unit for a term beginning before the expiration of the rental agreement, the rental agreement terminates as of the date of the tenancy. If the landlord fails to use reasonable efforts to rent the dwelling unit at a fair rental or if the landlord accepts the abandonment as a surrender, the rental agreement is terminated by the landlord as of the date the landlord has notice of the abandonment. If the tenancy is from month to month or week to week, the term of the rental agreement for this purpose is a month or a week, as the case may be.

History: En. 42-435 by Sec. 35, Ch. 313, L. 1977; R.C.M. 1947, 42-435.

70-24-427. Landlord's remedies after termination. If the rental agreement is terminated, the landlord has a claim for possession and for rent and a separate claim for actual damages for any breach of the rental agreement.

History: En. 42-438 by Sec. 38, Ch. 313, L. 1977; R.C.M. 1947, 42-438.

70-24-428. Landlord's recovery of possession limited. Except in the case of abandonment, surrender, or as permitted in this chapter, a landlord may not recover or take possession of the dwelling unit by action or otherwise, including purposeful diminution of services to the tenant by interrupting or causing the interruption of heat, running water, hot water, electricity, gas, or other essential services.

History: En. 42-439 by Sec. 39, Ch. 313, L. 1977; R.C.M. 1947, 42-439.

70-24-429. Holdover remedies — consent to continued occupancy. (1) If the tenant remains in possession without the landlord's consent after expiration of the term of the rental agreement or its termination, the landlord may bring an action for possession. If the tenant's holdover is purposeful and not in good faith, the landlord may recover an amount not more than 3 months' periodic rent or treble damages, whichever is greater.

(2) If the landlord consents to the tenant's continued occupancy, 70-24-201(2)(e) applies.

History: En. 42-440 by Sec. 40, Ch. 313, L. 1977; R.C.M. 1947, 42-440(3).

70-24-430. Disposition of personal property abandoned by tenant after termination. (1) If a tenancy terminates in any manner except by court order and the landlord reasonably believes the tenant has abandoned all personal property which the tenant has left on the premises, the landlord shall:

(a) make reasonable attempts to notify the tenant in writing that the property must be removed:

(i) from the premises; or

(ii) from the place of safekeeping if the landlord has stored the goods as provided in subsection (3) of this section; and

(b) specify a day not less than 15 days after delivery of a notice mailed by certified mail to the last-known address of the tenant, at which specified time the property will be disposed of if not removed.

(2) The landlord may dispose of the property by:

(a) selling all or part of the property at a public or private sale; or

(b) destroying or otherwise disposing of all or part of the property if he reasonably believes the value of the property is so low that the cost of storage or sale exceeds the reasonable value thereof.

(3) After notifying the tenant as required by subsection (1) of this section, the landlord shall store all goods, chattels, and personal property of the tenant in a place of safekeeping and shall exercise reasonable care for the property. The landlord may store the property in a commercial storage company, in which case the storage cost includes the actual storage charge plus the cost of removal of the property to the place of storage.

(4) If the tenant, upon receipt of the notice provided in subsection (1) of this section, responds in writing to the landlord on or before the day specified in the notice that he intends to remove his property and does not do so within 15 days after delivery of the tenant's response, the tenant's property shall be conclusively presumed to be abandoned. If the tenant removes the property, the landlord is entitled to reasonable or actual storage costs for the period the property remains in safekeeping plus the cost of removal of the property to the place of storage.

(5) The landlord is not responsible for any loss to the tenant resulting from storage unless the loss is caused by the landlord's purposeful or negligent act. On the event of purposeful violation, the landlord is liable for double damages.

(6) A public or private sale authorized by this section shall be conducted under the provisions of 30-9-504(3).

(7) The landlord may deduct from the proceeds of the sale the reasonable costs of notice, storage, and sale and must remit to the tenant the remaining proceeds, if any, together with an itemized accounting. If the tenant cannot after due diligence be found, the remaining proceeds shall be deposited with the county treasurer of the county in which the sale occurred and, if not claimed within 3 years, shall revert to the general fund of the county available for general purposes.

History: **En. 42-437 by Sec. 37, Ch. 313, L. 1977; R.C.M. 1947, 42-437.**

70-24-431. Retaliatory conduct by landlord prohibited. (1) Except as provided in this section, a landlord may not retaliate by increasing rent, decreasing services, or by bringing or threatening to bring an action for possession after the tenant:

(a) has complained of a violation applicable to the premises materially affecting health and safety to a governmental agency charged with responsibility for enforcement of a building or housing code;

(b) has complained to the landlord in writing of a violation under 70-24-303; or

(c) has organized or become a member of a tenant's union or similar organization.

(2) If the landlord acts in violation of subsection (1) of this section, the tenant is entitled to the remedies provided in 70-24-411 and has a defense in any retaliatory action against him for possession.

(3) In an action by or against the tenant, evidence of a complaint within 6 months before the alleged act of retaliation creates a rebuttable presumption that the landlord's conduct was in retaliation. The presumption does not arise if the tenant made the complaint after notice of a proposed rent increase or diminution of services. For purposes of this section, "rebuttable presumption" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

(4) Notwithstanding subsections (1), (2), and (3) of this section, a landlord may bring an action for possession if:

(a) the violation of the applicable building or housing code was caused primarily by lack of reasonable care by the tenant, a member of his family, or other persons on the premises with his consent;

(b) the tenant is in default in rent; or

(c) compliance with the applicable building or housing code requires alteration, remodeling, or demolition which would effectively deprive the tenant of use of the dwelling unit.

(5) The maintenance of an action under subsection (4) of this section does not release the landlord from liability under 70-24-405(2).

History: En. 42-442 by Sec. 42, Ch. 313, L. 1977; R.C.M. 1947, 42-442.

70-24-432 through 70-24-440 reserved.

70-24-441. Termination by landlord or tenant. (1) The landlord or the tenant may terminate a week-to-week tenancy by a written notice given to the other at least 7 days before the termination date specified in the notice.

(2) The landlord or the tenant may terminate a month-to-month tenancy by giving to the other at any time during the tenancy at least 30 days' notice in writing prior to the date designated in the notice for the termination of the tenancy.

(3) The tenancy terminates on the date designated and without regard to the expiration of the period for which, by the terms of the tenancy, rents are to be paid. Unless otherwise agreed, rent is uniformly apportionable from day to day.

History: En. 42-440 by Sec. 40, Ch. 313, L. 1977; R.C.M. 1947, 42-440(1), (2).

70-24-442. Attorney fees — costs. (1) In an action on a rental agreement or arising under this chapter, reasonable attorney fees, together with costs and necessary disbursements, may be awarded to the prevailing party notwithstanding an agreement to the contrary.

(2) As used in this section, "prevailing party" means the party in whose favor final judgment is rendered.

History: **En. 42-417 by Sec. 17, Ch. 313, L. 1977; R.C.M. 1947, 42-417.**

CHAPTER 25

RESIDENTIAL TENANTS' SECURITY DEPOSITS

Part 1 — General Provisions

Section
70-25-101. Definitions.
70-25-102. Application of chapter.
70-25-103. Waivers and contrary provisions invalid.

Part 2 — Rights and Duties

70-25-201. Security deposit — deductions authorized therefrom.
70-25-202. List of damages and refund — delivery to departing tenant.
70-25-203. Failure to provide list — forfeiture of deduction rights.
70-25-204. Wrongful withholding of security deposit — action.
70-25-205. Failure of departing tenant to furnish new address.
70-25-206. Landlord to furnish statement of condition of premises at beginning of lease.

Part 1

General Provisions

70-25-101. Definitions. As used in this chapter, the following definitions apply:

(1) "Cleaning expenses" means the actual and necessary cost of cleaning done by an owner or his selected representative for cleaning needs not attributable to normal wear brought about by the tenant's failure to bring the premises to the condition it was at the time of renting.

(2) "Damage" means any and all tangible loss, injury, or deterioration of a leasehold premises caused by the willful or accidental acts of the tenant occupying same or by the tenant's family, licensees, or invitees, as well as any and all tangible loss, injury, or deterioration resulting from the tenant's omissions or failure to perform any duty imposed upon the tenant by law with respect to the leasehold.

(3) "Leasehold premises" means the premises occupied by the tenant together with all common areas, recreational facilities, parking areas, and storage facilities to which the tenant has access, as well as all personal property owned or controlled by the landlord the use of which is permitted to the tenant.

(4) "Security deposit" means value given, in money or its equivalent, to secure the payment of rent by the tenant under a leasehold agreement or to secure payment for damage to and cleaning of the leasehold premises. If a leasehold agreement or an agreement incident thereto requires the tenant or

prospective tenant to provide or maintain in effect any deposit to the landlord for part or all of the term of the leasehold agreement, the deposit shall be presumed to be a security deposit.

History: En. 42-301 by Sec. 1, Ch. 219, L. 1974; amd. Sec. 1, Ch. 297, L. 1977; R.C.M. 1947, 42-301.

70-25-102. Application of chapter. This chapter applies to all rentals of dwellings, including mobile homes but excluding property of public housing authorities.

History: En. 42-302 by Sec. 2, Ch. 219, L. 1974; R.C.M. 1947, 42-302.

70-25-103. Waivers and contrary provisions invalid. Any provision of a leasehold agreement, either oral or written, that is contrary to this chapter is invalid. Any attempted waiver of this chapter by the tenant is invalid.

History: En. 42-309 by Sec. 9, Ch. 219, L. 1974; R.C.M. 1947, 42-309; amd. Sec. 13, Ch. 115, L. 1979.

Part 2

Rights and Duties

70-25-201. Security deposit — deductions authorized therefrom. (1) Any landlord renting property covered by this chapter may deduct from the security deposit a sum equal to the damage alleged to have been caused by the tenant, together with a sum equal to the unpaid rent owing to the landlord at the time of such deduction and a sum for actual cleaning expenses.

(2) No cleaning charges may be imposed for normal maintenance performed on a cyclical basis by the landlord as noted by the landlord at the time the tenant occupies the space unless the landlord is forced to perform this maintenance because of negligence of the tenant. Additionally, no cleaning charges may be deducted until notice has been given to the tenant. The notice shall include the cleaning not accomplished by the tenant and the additional and type or types of cleaning which need to be done by the tenant to bring the premises back to its condition at the time of its renting. After the delivery of the notice, the tenant has 48 hours to complete the required cleaning.

(3) No person may deduct or withhold from the security deposit any amount for purposes other than those set forth in this section.

History: En. 42-303 by Sec. 3, Ch. 219, L. 1974; amd. Sec. 2, Ch. 297, L. 1977; R.C.M. 1947, 42-303; amd. Sec. 14, Ch. 115, L. 1979.

70-25-202. List of damages and refund — delivery to departing tenant. Every landlord, within 30 days subsequent to the termination of a tenancy or within 30 days subsequent to a surrender and acceptance of the leasehold premises, whichever occurs first, shall provide the departing tenant with a written list of any damage and cleaning charges, brought after the provisions of 70-25-201 have been followed, to the leasehold premises which the landlord alleges is the responsibility of the tenant. Delivery of such list shall be accompanied by payment of the difference, if any, between the security deposit and the permitted charges set forth in 70-25-201. Delivery shall be accomplished by mailing the list and refund to the tenant's last-known address or the new address provided by the tenant.

History: En. 42-304 by Sec. 4, Ch. 219, L. 1974; amd. Sec. 3, Ch. 297, L. 1977; R.C.M. 1947, 42-304.

70-25-203. Failure to provide list — forfeiture of deduction rights. Any landlord who fails to provide the departing tenant with a written list of damage and cleaning charges as required by 70-25-202 shall forfeit all rights to withhold any portion of the security deposit for the damages or cleaning charges.

History: En. 42-305 by Sec. 5, Ch. 219, L. 1974; amd. Sec. 4, Ch. 297, L. 1977; R.C.M. 1947, 42-305.

70-25-204. Wrongful withholding of security deposit — action. (1) Any person who wrongfully withholds a residential property security deposit or any portion thereof shall be liable in damages to the tenant in a civil action for an amount equal to double the sum determined to have been wrongfully withheld or deducted. The attorney's fees may be awarded the prevailing party at the discretion of the court. The burden of proof of damages caused by the tenant to the leasehold premises shall be on the landlord.

(2) No action may be maintained by a tenant for any amount wrongfully withheld or deducted prior to:

(a) the tenant's receipt from the landlord or his agent of a written denial of the sum alleged to be wrongfully detained;

(b) the expiration of a 30-day period after the termination of a tenancy; or

(c) the expiration of a 30-day period after surrender and acceptance of the leasehold premises, whichever occurs first.

History: En. 42-306 by Sec. 6, Ch. 219, L. 1974; R.C.M. 1947, 42-306.

70-25-205. Failure of departing tenant to furnish new address. Failure by the departing tenant to provide the landlord with his new address in writing upon termination of the tenancy or upon surrender and acceptance of the leasehold premises, whichever occurs first, shall relieve the landlord from double liability as imposed by 70-25-204. Such failure shall not, however, bar the tenant from recovering the actual amount owing to him by the landlord.

History: En. 42-307 by Sec. 7, Ch. 219, L. 1974; R.C.M. 1947, 42-307.

70-25-206. Landlord to furnish statement of condition of premises at beginning of lease. (1) Any person engaged in the rental of property for residential purposes who requires a security deposit shall furnish to each prospective tenant, prior to execution of a lease or creation of a tenancy, a separate written statement as to the present condition of the premises intended to be let, as well as a copy of the written list of damage and cleaning charges, if any, provided to the tenant of the immediately preceding leasehold agreement for the premises in question.

(2) Each written statement of the present condition of a premises intended to be let shall contain at least the following:

(a) a clear and concise statement of the present condition of the premises known to the landlord or his agent or which should have been known upon reasonable inspection;

(b) if the premises have never previously been let, a statement indicating such fact;

(c) if any damage to the leasehold premises resulting from the immediately preceding leasehold agreement has not been restored, a statement indicating such fact and setting forth such unrestored damage; and

(d) the signature of the landlord or his agent.

(3) Any person engaged in the rental of property for residential purposes who fails to furnish a prospective tenant, prior to the execution of the lease or creation of the tenancy, with a separate written statement of the present condition of the premises intended to be let and, if any, a written list of damage and cleaning charges provided to the tenant of the immediately preceding leasehold agreement shall be barred from recovering any sum for damage to or cleaning of the leasehold premises unless he can establish by clear and convincing evidence that the damage occurred during the tenancy in question and was caused by the tenant occupying the leasehold premises or the tenant's family, licensees, or invitees.

History: En. 42-308 by Sec. 8, Ch. 219, L. 1974; amd. Sec. 5, Ch. 297, L. 1977; R.C.M. 1947, 42-308.

CHAPTER 26

LANDLORD AND TENANT SUPPLEMENTARY PROVISIONS RESIDENTIAL AND COMMERCIAL

Part 1 — Residential and Commercial

Section

70-26-101. Letting of parts of rooms prohibited.
70-26-102. Transferee of rental property to have same rights as transferor.
70-26-103. Attornment of tenant to stranger void.
70-26-104. Notice of action by third person served on tenant — duty to inform landlord.
70-26-105. Assignee of lessee — remedies of lessor against.
70-26-106. Rights of lessee and his assignees against lessor and his assignees.
70-26-107. Remedy for rent on lease for life.
70-26-108. Rent dependent on life — recovery.
70-26-109. Change of lease terms by notice.
70-26-110. Lease of city lot for over 75 years void.

Part 2 — Commercial

70-26-201. Term of lease when none specified.
70-26-202. Rent — when payable.
70-26-203. Failure of lessor to repair — lessee's remedies.
70-26-204. Renewal of lease by lessee's continued possession.
70-26-205. Notice required to terminate lease.
70-26-206. Rights of tenant for years or at will.
70-26-207. Agricultural leases for more than 10 years void.

Part 1

Residential and Commercial

70-26-101. Letting of parts of rooms prohibited. One who hires part of a room for a dwelling is entitled to the whole of the room, notwithstanding any agreement to the contrary, and if a landlord lets a room as a dwelling for more than one family, the person to whom he first lets any part of it is entitled to the possession of the whole room for the term agreed upon, and every tenant in the building under the same landlord is relieved from all obligation to pay rent to him while such double letting of any room continues.

History: En. Sec. 2629, Civ. C. 1895; re-en. Sec. 5235, Rev. C. 1907; re-en. Sec. 7750, R.C.M. 1921; Cal. Civ. C. Sec. 1950; Based on Field Civ. C. Sec. 998; re-en. Sec. 7750, R.C.M. 1935; R.C.M. 1947, 42-210.

70-26-102. Transferee of rental property to have same rights as transferor. A person to whom any real property is transferred or devised, upon which rent has been reserved, or to whom any such rent is transferred is entitled to the same remedies for recovery of rent, for nonperformance of any of the terms of the lease, or of any waste or cause of forfeiture as his grantor or devisor might have had.

History: En. Sec. 1273, Civ. C. 1895; re-en. Sec. 4521, Rev. C. 1907; re-en. Sec. 6763, R.C.M. 1921; Cal. Civ. C. Sec. 821; Field Civ. C. Sec. 260; re-en. Sec. 6763, R.C.M. 1935; R.C.M. 1947, 67-704.

70-26-103. Attornment of tenant to stranger void. The attornment of a tenant to a stranger is void unless it is made with the consent of the landlord or in consequence of a judgment of a court of competent jurisdiction.

History: En. Sec. 48, p. 487, Bannack Stat.; re-en. Sec. 48, p. 403, Cod. Stat. 1871; re-en. Sec. 225, 5th Div. Rev. Stat. 1879; re-en. Sec. 283, 5th Div. Comp. Stat. 1887; re-en. Sec. 2627, Civ. C. 1895; re-en. Sec. 5233, Rev. C. 1907; re-en. Sec. 7748, R.C.M. 1921; Cal. Civ. C. Sec. 1948; re-en. Sec. 7748, R.C.M. 1935; R.C.M. 1947, 42-208.

70-26-104. Notice of action by third person served on tenant — duty to inform landlord. Every tenant who receives notice of any proceeding to recover the real property occupied by him or the possession thereof must immediately inform his landlord of the same and also deliver to the landlord the notice, if in writing, and is responsible to the landlord for all damages which he may sustain by reason of any omission to inform him of the notice or to deliver it to him if in writing.

History: En. Sec. 2628, Civ. C. 1895; re-en. Sec. 5234, Rev. C. 1907; re-en. Sec. 7749, R.C.M. 1921; Cal. Civ. C. Sec. 1949; Based on Field Civ. C. Sec. 997; re-en. Sec. 7749, R.C.M. 1935; R.C.M. 1947, 42-209.

70-26-105. Assignee of lessee — remedies of lessor against. Whatever remedies the lessor of any real property has against his immediate lessee for the breach of any agreement in the lease or for recovery of the possession, he has against the assignees of the lessee for any cause of action accruing while they are such assignees, except where the assignment is made by way of security for a loan and is not accompanied by possession of the premises.

History: En. Sec. 1274, Civ. C. 1895; re-en. Sec. 4522, Rev. C. 1907; re-en. Sec. 6764, R.C.M. 1921; Cal. Civ. C. Sec. 822; Based on Field Civ. C. Sec. 261; re-en. Sec. 6764, R.C.M. 1935; R.C.M. 1947, 67-705.

70-26-106. Rights of lessee and his assignees against lessor and his assignees. Whatever remedies the lessee of any real property may have against his immediate lessor for the breach of any agreement in the lease, he may have against the assigns of the lessor and the assigns of the lessee may have against the lessor and his assigns, except upon covenants against encumbrances or relating to the title or possession of the premises.

History: En. Sec. 1275, Civ. C. 1895; re-en. Sec. 4523, Rev. C. 1907; re-en. Sec. 6765, R.C.M. 1921; Cal. Civ. C. Sec. 823; re-en. Sec. 6765, R.C.M. 1935; R.C.M. 1947, 67-706.

70-26-107. Remedy for rent on lease for life. Rent due upon a lease for life may be recovered in the same manner as upon a lease for years.

History: En. Sec. 1276, Civ. C. 1895; re-en. Sec. 4524, Rev. C. 1907; re-en. Sec. 6766, R.C.M. 1921; Cal. Civ. C. Sec. 824; Field Civ. C. Sec. 263; re-en. Sec. 6766, R.C.M. 1935; R.C.M. 1947, 67-707.

70-26-108. Rent dependent on life — recovery. Rent dependent on the life of a person may be recovered after as well as before his death.

History: En. Sec. 1277, Civ. C. 1895; re-en. Sec. 4525, Rev. C. 1907; re-en. Sec. 6767, R.C.M. 1921; Cal. Civ. C. Sec. 825; Field Civ. C. Sec. 264; re-en. Sec. 6767, R.C.M. 1935; R.C.M. 1947, 67-708.

70-26-109. Change of lease terms by notice. In all leases of lands or tenements or of any interest therein from month to month, the landlord may, upon giving notice in writing at least 15 days before the expiration of the month, change the terms of the lease to take effect at the expiration of the month. The notice, when served upon the tenant, shall of itself operate and be effectual to create and establish as a part of the lease the terms, rent, and conditions specified in the notice if the tenant shall continue to hold the premises after the expiration of the month.

History: En. Sec. 1279, Civ. C. 1895; re-en. Sec. 4527, Rev. C. 1907; re-en. Sec. 6769, R.C.M. 1921; Cal. Civ. C. Sec. 827; re-en. Sec. 6769, R.C.M. 1935; R.C.M. 1947, 67-710.

70-26-110. Lease of city lot for over 75 years void. No lease or grant of any town or city lot for a period longer than 75 years, in which shall be reserved any rent or service of any kind, shall be valid.

History: En. Sec. 1153, Civ. C. 1895; re-en. Sec. 4466, Rev. C. 1907; re-en. Sec. 6708, R.C.M. 1921; Cal. Civ. C. Sec. 718; amd. Sec. 1, Ch. 147, L. 1929; re-en. Sec. 6708, R.C.M. 1935; R.C.M. 1947, 67-409.

Part 2

Commercial

70-26-201. Term of lease when none specified. A hiring of real property, other than lodgings and dwelling houses, in places where there is no usage on the subject, is presumed to be for 1 year from its commencement unless otherwise expressed in the hiring.

History: En. Sec. 2622, Civ. C. 1895; re-en. Sec. 5228, Rev. C. 1907; re-en. Sec. 7743, R.C.M. 1921; Cal. Civ. C. Sec. 1943; re-en. Sec. 7743, R.C.M. 1935; R.C.M. 1947, 42-203.

70-26-202. Rent — when payable. When there is no usage or contract to the contrary, rents for real property under an arrangement not governed by chapter 24 of this title are payable at the termination of the holding if it does not exceed 1 year. If the holding is by the day, week, month, quarter, or year, rent is payable at the termination of the respective periods, as it successively becomes due.

History: En. Sec. 2626, Civ. C. 1895; re-en. Sec. 5232, Rev. C. 1907; re-en. Sec. 7747, R.C.M. 1921; Cal. Civ. C. Sec. 1947; re-en. Sec. 7747, R.C.M. 1935; R.C.M. 1947, 42-207; amd. Sec. 15, Ch. 115, L. 1979.

70-26-203. Failure of lessor to repair — lessee's remedies. (1) If within a reasonable time after notice to the lessor of dilapidations which he ought to repair, he neglects to do so, and if the cost of such repairs does not require an expenditure greater than 1 month's rent of the premises, the lessee may perform such repairs himself and deduct the expenses of such repairs from the rent, or the lessee may vacate the premises, in which case he is discharged from further payment of rent or performance of other conditions.

(2) Subsection (1) does not apply to real property leased under an arrangement governed by chapter 24 of this title.

History: En. Sec. 2621, Civ. C. 1895; re-en. Sec. 5227, Rev. C. 1907; re-en. Sec. 7742, R.C.M. 1921; Cal. Civ. C. Sec. 1942; Based on Field Civ. C. Sec. 991; re-en. Sec. 7742, R.C.M. 1935; R.C.M. 1947, 42-202; amd. Sec. 16, Ch. 115, L. 1979.

70-26-204. Renewal of lease by lessee's continued possession. If a lessee of real property leased under an arrangement not governed by chapter 24 of this title remains in possession thereof after the expiration of the hiring and the lessor accepts a rent from him, the parties are presumed to have renewed the hiring on the same terms and for the same time, not exceeding 1 month when the rent is payable monthly, or in any case 1 year.

History: En. Sec. 2624, Civ. C. 1895; re-en. Sec. 5230, Rev. C. 1907; re-en. Sec. 7745, R.C.M. 1921; Cal. Civ. C. Sec. 1945; Based on Field Civ. C. Sec. 994; re-en. Sec. 7745, R.C.M. 1935; R.C.M. 1947, 42-205; amd. Sec. 17, Ch. 115, L. 1979.

70-26-205. Notice required to terminate lease. (1) A hiring of real property for a term not specified by the parties is presumed to be renewed as stated in 70-26-204 at the end of the term implied by law unless one of the parties gives notice to the other of his intention to terminate the hiring at least as long before the expiration thereof as the term of the hiring itself, not exceeding 1 month.

(2) Subsection (1) does not apply to real property leased under an arrangement governed by chapter 24 of this title.

History: En. Sec. 2625, Civ. C. 1895; re-en. Sec. 5231, Rev. C. 1907; re-en. Sec. 7746, R.C.M. 1921; Cal. Civ. C. Sec. 1946; Based on Field Civ. C. Sec. 995; re-en. Sec. 7746, R.C.M. 1935; R.C.M. 1947, 42-206; amd. Sec. 18, Ch. 115, L. 1979.

70-26-206. Rights of tenant for years or at will. (1) A tenant for years or at will, unless he is a wrongdoer by holding over, may occupy the buildings, take the annual products of the soil, and work mines and quarries open at the commencement of his tenancy; and a tenant at will or for an indefinite term may cultivate and harvest the crops growing at the end of his tenancy.

(2) A tenant for years or at will has no other rights to the property than those given to him by the agreement or instrument by which his tenancy is acquired or by subsection (1).

(3) Subsection (2) does not apply to arrangements governed by chapter 24 of this title.

History: (1)En. Sec. 1271, Civ. C. 1895; re-en. Sec. 4519, Rev. C. 1907; re-en. Sec. 6761, R.C.M. 1921; Cal. Civ. C. Sec. 819; Based on Field Civ. C. Sec. 258; re-en. Sec. 6761, R.C.M. 1935; Sec. 67-702, R.C.M. 1947; (2)En. Sec. 1272, Civ. C. 1895; re-en. Sec. 4520, Rev. C. 1907; re-en. Sec. 6762, R.C.M. 1921; Cal. Civ. C. Sec. 820; Field Civ. C. Sec. 259; re-en. Sec. 6762, R.C.M. 1935; Sec. 67-703, R.C.M. 1947; R.C.M. 1947, 67-702, 67-703; (3)En. Sec. 19, Ch. 115, L. 1979.

70-26-207. Agricultural leases for more than 10 years void. No lease or grant of agricultural lands for agricultural purposes for a longer period than 10 years, in which shall be reserved any rent or service of any kind, shall be valid, provided that the foregoing shall not limit or affect leases with option to purchase made by the farm security administration of the United States department of agriculture, but leases or grants of lands lying outside the limits of cities and towns, for any purpose other than for agricultural purposes, may be for such period as may be agreed to by the parties to such leases or grants.

History: En. Sec. 1152, Civ. C. 1895; re-en. Sec. 4465, Rev. C. 1907; amd. Sec. 1, Ch. 172, L. 1919; re-en. Sec. 6707, R.C.M. 1921; Cal. Civ. C. Sec. 717; re-en. Sec. 6707, R.C.M. 1935; amd. Sec. 1, Ch. 151, L. 1941; R.C.M. 1947, 67-408.

CHAPTER 27

FORCIBLE ENTRY AND DETAINER
UNLAWFUL DETAINER

Part 1 — Definitions and Preliminary Procedure

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70-27-103. Forcible detainer defined.
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70-27-105. Remedies of landlord after notice.
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70-27-107. Action for possession under right of reentry — notice not required.
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Part 1

Definitions and Preliminary Procedure

70-27-101. Application and jurisdiction. (1) This chapter, except as it relates to forcible detainer as defined in 70-27-103(2) only and as it relates to forcible entry, does not apply to arrangements governed by chapter 24 of this title.

(2) The district court of the county in which the property or some part of it is situated shall have jurisdiction of proceedings under this chapter, provided that justices' courts, within their respective counties, shall have concurrent jurisdiction.

History: En. Sec. 2084, C. Civ. Proc. 1895; re-en. Sec. 7273, Rev. C. 1907; re-en. Sec. 9891, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1163; re-en. Sec. 9891, R.C.M. 1935; amd. Sec. 26, Ch. 491, L. 1973; R.C.M. 1947, 93-9705; amd. Sec. 3, Ch. 417, L. 1979.

70-27-102. Forcible entry defined. Every person is guilty of a forcible entry who either:

(1) by breaking open doors, windows, or other parts of a house or by any kind of violence or circumstance of terror enters upon or into any real property or mining claim; or

(2) after entering peaceably upon real property or mining claim, turns out by force, threats, or menacing conduct the party in possession.

History: En. Sec. 2080, C. Civ. Proc. 1895; re-en. Sec. 7269, Rev. C. 1907; re-en. Sec. 9887, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1159; re-en. Sec. 9887, R.C.M. 1935; R.C.M. 1947, 93-9701.

70-27-103. Forcible detainer defined. Every person is guilty of a forcible detainer who either:

(1) by force or by menaces and threats of violence unlawfully holds and keeps the possession of any real property or mining claim, whether the same was acquired peaceably or otherwise; or

(2) in the nighttime or during the absence of the occupant of any lands or mining claim unlawfully enters upon real property and, after demand made for the surrender thereof, for the period of 5 days refuses to surrender the same to such former occupant. The occupant of real property or mining

claim, within the meaning of this subsection, is one who, within 5 days preceding such unlawful entry, was in the peaceable and undisputed possession of such lands.

History: En. Sec. 2081, C. Civ. Proc. 1895; re-en. Sec. 7270, Rev. C. 1907; re-en. Sec. 9888, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1160; re-en. Sec. 9888, R.C.M. 1935; R.C.M. 1947, 93-9702.

70-27-104. Tenancy at will — termination by notice. A tenancy or other estate at will, however created, may be terminated by the landlord's giving notice in writing to the tenant, in the manner prescribed in this chapter, to remove from the premises within a period of not less than 1 month, to be specified in the notice; but none of the estates or tenancies embraced by the provisions of 70-15-202(4) is a tenancy or estate at will.

History: En. Sec. 1240, Civ. C. 1895; re-en. Sec. 4502, Rev. C. 1907; re-en. Sec. 6744, R.C.M. 1921; Cal. Civ. C. Sec. 789; Based on Field Civ. C. Sec. 240; amd. Sec. 1, Ch. 50, L. 1931; re-en. Sec. 6744, R.C.M. 1935; R.C.M. 1947, 67-523.

70-27-105. Remedies of landlord after notice. After such notice has been served and the period specified by such notice has expired, but not before, the landlord may reenter or proceed according to law to recover possession.

History: En. Sec. 1241, Civ. C. 1895; re-en. Sec. 4503, Rev. C. 1907; re-en. Sec. 6745, R.C.M. 1921; Cal. Civ. C. Sec. 790; Based on Field Civ. C. Sec. 242; re-en. Sec. 6745, R.C.M. 1935; R.C.M. 1947, 67-524.

70-27-106. Reentry — when and how to be made. Whenever the right of reentry is given to the grantor or lessor in any grant or lease or otherwise, such reentry may be made at any time after the right has accrued, upon 3 days' notice, as provided in this chapter.

History: En. Sec. 1242, Civ. C. 1895; re-en. Sec. 4504, Rev. C. 1907; re-en. Sec. 6746, R.C.M. 1921; Cal. Civ. C. Sec. 791; Based on Field Civ. C. Sec. 243; re-en. Sec. 6746, R.C.M. 1935; R.C.M. 1947, 67-525.

70-27-107. Action for possession under right of reentry — notice not required. An action for the possession of real property leased or granted with a right of reentry may be maintained at any time in the district court, after the right to reenter has accrued, without the notice prescribed in 70-27-106.

History: En. Sec. 1244, Civ. C. 1895; re-en. Sec. 4506, Rev. C. 1907; re-en. Sec. 6748, R.C.M. 1921; Cal. Civ. C. Sec. 793; Field Civ. C. Sec. 244; re-en. Sec. 6748, R.C.M. 1935; R.C.M. 1947, 67-527.

70-27-108. Unlawful detainer defined. A tenant of real property or mining claim, for a term less than life, is guilty of unlawful detainer:

(1) when he continues in possession, in person or by subtenant, of the property or any part thereof after the expiration of the term for which it is let to him without the permission of the landlord or the successor in estate of his landlord, if any there be, but in case of a tenancy at will, it must first be terminated by notice, as prescribed in 70-27-104;

(2) where he continues in possession, in person or by subtenant, without permission of his landlord or the successor in estate of his landlord, if any there be, after default in the payment of rent, pursuant to the lease or agreement under which the property is held, and 3 days' notice in writing requiring its payment, stating the amount which is due, or possession of the

property shall have been served upon him and, if there be a subtenant in actual occupation of the premises, also upon such subtenant. Such notice may be served at any time within 1 year after the rent becomes due. In all cases of tenancy upon agricultural lands where the tenant has held over and retained possession for more than 60 days after the expiration of his term without any demand of possession or notice to quit by the landlord or the successor in estate of his landlord, if any there be, he shall be deemed to be holding by permission of the landlord or the successor in estate of his landlord and shall be entitled to hold under the terms of the lease for another full year and shall not be guilty of an unlawful detainer during said year, and such holding over for the period aforesaid shall be taken and construed as a consent on the part of a tenant to hold for another year;

(3) when he continues in possession, in person or by subtenant, after a neglect or failure to perform other conditions or covenants of the lease or agreement under which the property is held, including any covenant not to assign or sublet, than the one for the payment of rent, and 3 days' notice in writing, requiring the performance of such conditions or covenants or the possession of the property, shall have been served upon him and, if there be a subtenant in actual occupation of the premises, also upon such subtenant. Within 3 days after the serving of the notice, the tenant or any subtenant in actual occupation of the premises or any mortgagee of the term or other person interested in its continuance may perform the conditions or covenants of the lease or pay the stipulated rent, as the case may be, and thereby save the lease from forfeiture. If the covenants and conditions of the lease violated by the lessee cannot afterward be performed, then no notice, as last prescribed herein, need be given to said lessee or his subtenant demanding the performance of the violated covenant or conditions of the lease. A tenant may take proceedings similar to those prescribed in this chapter to obtain possession of the premises let to an undertenant in case of his unlawful detention of the premises underlet to him. Any tenant or subtenant assigning or subletting or committing waste upon the demised premises contrary to the covenants of his lease thereby terminates the lease, and the landlord or his successor in estate shall, upon service of 3 days' notice to quit upon the person or persons in possession, be entitled to restitution of possession of such demised premises under the provisions of this chapter.

History: **En. Sec. 658, p. 174, Bannack Stat.; re-en. Sec. 647, p. 165, Cod. Stat. 1871; re-en. Sec. 707, 1st Div. Rev. Stat. 1879; re-en. Sec. 727, 1st Div. Comp. Stat. 1887; en. Sec. 2082, C. Civ. Proc. 1895; re-en. Sec. 7271, Rev. C. 1907; re-en. Sec. 9889, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1161; re-en. Sec. 9889, R.C.M. 1935; R.C.M. 1947, 93-9703.**

70-27-109. General rules of practice applicable. Except as otherwise provided in this chapter, the provisions of Title 25 are applicable to and constitute the rules of practice mentioned in this chapter.

History: **En. Sec. 2097, C. Civ. Proc. 1895; re-en. Sec. 7286, Rev. C. 1907; re-en. Sec. 9904, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1177; re-en. Sec. 9904, R.C.M. 1935; R.C.M. 1947, 93-9718; amd. Sec. 20, Ch. 115, L. 1979.**

70-27-110. Service of notice — how made. (1) The notices required by 70-27-108 may be served, either:

(a) by delivering a copy to the tenant personally;

(b) if he be absent from his place of residence and from his usual place of business, by leaving a copy with some person of suitable age and discretion at either place and sending a copy through the mail addressed to the tenant at his place of residence; or

(c) if such place of residence and business cannot be ascertained or a person of suitable age or discretion there cannot be found, then by affixing a copy in a conspicuous place on the property and also delivering a copy to a person there residing if such person can be found and also sending a copy through the mail addressed to the tenant at the place where the property is situated.

(2) Service upon a subtenant may be made in the same manner.

History: **En. Sec. 2083, C. Civ. Proc. 1895; re-en. Sec. 7272, Rev. C. 1907; re-en. Sec. 9890, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1162; re-en. Sec. 9890, R.C.M. 1935; R.C.M. 1947, 93-9704.**

70-27-111. Parties defendant. (1) No person other than the tenant of the premises and subtenant, if there be one, in the actual occupation of the premises when the complaint is filed need be made parties defendant in the proceeding, nor shall any proceeding abate or the plaintiff be nonsuited for the nonjoinder of any person who might have been made party defendant; but when it appears that any of the parties served with process or appearing in the proceeding is guilty of the offense charged, judgment must be rendered against such party.

(2) In case a defendant has become a subtenant of the premises in controversy after the service of the notice provided for by 70-27-108(2) upon the tenant of the premises, the fact that such notice was not served on each subtenant shall constitute no defense to the action.

(3) In case a married person is a tenant or subtenant, failure to join such person's spouse shall constitute no defense; but in case the spouse is not joined, an execution issued upon a personal judgment against the tenant or subtenant can only be enforced against property on the premises at the commencement of the action or against property that is owned solely by the tenant or subtenant and not by his spouse.

(4) All persons who enter the premises under the tenant after the commencement of the action shall be bound by the judgment the same as if he or they had been made party to the action.

History: **En. Sec. 2085, C. Civ. Proc. 1895; re-en. Sec. 7274, Rev. C. 1907; re-en. Sec. 9892, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1164; re-en. Sec. 9892, R.C.M. 1935; amd. Sec. 58, Ch. 535, L. 1975; R.C.M. 1947, 93-9706.**

70-27-112. Applicability of general provisions on parties. Except as provided in 70-27-111, the provisions of Title 25 relating to parties to civil actions are applicable to this proceeding.

History: **En. Sec. 2086, C. Civ. Proc. 1895; re-en. Sec. 7275, Rev. C. 1907; re-en. Sec. 9893, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1165; re-en. Sec. 9893, R.C.M. 1935; R.C.M. 1947, 93-9707.**

70-27-113. Complaint and summons. (1) The plaintiff, in his complaint, which must be in writing, must set forth the facts on which he seeks to recover and describe the premises with reasonable certainty and may set forth therein any circumstances of fraud, force, or violence which may have accompanied the alleged forcible entry or forcible or unlawful detainer and claim damages therefor. In case the unlawful detainer charged be after default in the payment of rent, the complaint must state the amount of such rent.

(2) Upon filing the complaint, a summons must be issued thereon as in other cases, returnable at a date designated therein, which shall not be less than 4 days or more than 12 days from its date.

History: En. Sec. 2087, C. Civ. Proc. 1895; re-en. Sec. 7276, Rev. C. 1907; re-en. Sec. 9894, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1166; re-en. Sec. 9894, R.C.M. 1935; R.C.M. 1947, 93-9708(part).

70-27-114. Summons — contents — service. (1) The summons must:

(a) state the parties to the proceeding, the court in which the same is brought, the nature of the action in concise terms, and the relief sought and also the return day; and

(b) notify the defendant to appear and answer within the time designated or that the relief sought will be taken against him.

(2) The summons must be directed to the defendant and be served at least 4 days before the return day designated therein and must be served and returned in the same manner as summons in civil actions is served and returned.

(3) The summons must be served personally upon the defendants if the defendants can be found with due diligence within the state or if the defendants cannot be found with due diligence within the state, the summons must be served in the same manner as notices are required to be served in 70-27-110. The complaint need not be served.

(4) Upon the return of any summons issued under this chapter, where the same has not for any reason been served or not served in time, the plaintiff may have a new summons issued, the same as if no previous summons had been issued.

History: En. Secs. 2087, 2088, C. Civ. Proc. 1895; re-en. Secs. 7276, 7277, Rev. C. 1907; re-en. Secs. 9894, 9895, R.C.M. 1921; Cal. C. Civ. Proc. Secs. 1166, 1167; re-en. Secs. 9894, 9895, R.C.M. 1935; R.C.M. 1947, 93-9708(part), 93-9709; amd. Sec. 1, Ch. 303, L. 1979.

70-27-115. Defendant's appearance and answer. On or before the day fixed for his appearance, the defendant may appear and answer or move to dismiss the complaint for failure to state a claim.

History: En. Sec. 2090, C. Civ. Proc. 1895; re-en. Sec. 7279, Rev. C. 1907; re-en. Sec. 9897, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1170; re-en. Sec. 9897, R.C.M. 1935; R.C.M. 1947, 93-9711; amd. Sec. 21, Ch. 115, L. 1979.

70-27-116. Verification of complaint and answer. The complaint and answer must be verified. If new matter be set up in the answer, it is deemed denied.

History: En. Sec. 2095, C. Civ. Proc. 1895; re-en. Sec. 7284, Rev. C. 1907; re-en. Sec. 9902, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1175; re-en. Sec. 9902, R.C.M. 1935; R.C.M. 1947, 93-9716.

70-27-117. Judgment by default. If at the time appointed the defendant does not appear and defend, the court must enter his default and enter judgment in favor of the plaintiff as prayed for in the complaint.

History: En. Sec. 2089, C. Civ. Proc. 1895; re-en. Sec. 7278, Rev. C. 1907; re-en. Sec. 9896, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1169; re-en. Sec. 9896, R.C.M. 1935; R.C.M. 1947, 93-9710.

Part 2

Trial, Judgment, and Appeal

70-27-201. Trial by jury. Whenever an issue of fact is presented by the pleadings, it must be tried by a jury unless such jury be waived as in other cases. The jury shall be formed in the same manner as other trial juries in the court in which the action is pending.

History: En. Sec. 2091, C. Civ. Proc. 1895; re-en. Sec. 7280, Rev. C. 1907; re-en. Sec. 9898, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1171; re-en. Sec. 9898, R.C.M. 1935; R.C.M. 1947, 93-9712.

70-27-202. Actions in justice's court to be tried within 10 days. (1) Actions filed in justice's court under this chapter shall be tried within 10 days after the appearance or answer date stated in the summons unless the defendant applying for a continuance shall give an undertaking to the adverse party with good and sufficient security to be approved by the court, conditioned for the payment of all damages and rent that may accrue if judgment be rendered against the defendant.

(2) The plaintiff and defendant may stipulate to a continuance of the trial beyond the limit of this section without the necessity of an undertaking.

History: En. 93-9712.1 by Sec. 1, Ch. 166, L. 1977; R.C.M. 1947, 93-9712.1.

70-27-203. Showings required on trial. On the trial of any proceeding for any forcible entry or forcible detainer, the plaintiff shall only be required to show, in addition to the forcible entry or forcible detainer complained of, that he was peaceably in the actual possession at the time of the forcible entry or was entitled to the possession at the time of the forcible detainer. The defendant may show in his defense that he or his ancestors or those whose interest in such premises he claims have been in the quiet possession thereof for the space of 1 whole year together next before the commencement of the proceedings and that his interest therein is not then ended or determined, and such showing is a bar to the proceedings.

History: En. Sec. 654, p. 173, Bannack Stat.; re-en. Sec. 643, p. 164, Cod. Stat. 1871; re-en. Sec. 703, 1st Div. Rev. Stat. 1879; re-en. Sec. 723, 1st Div. Comp. Stat. 1887; amd. Sec. 2092, C. Civ. Proc. 1895; re-en. Sec. 7281, Rev. C. 1907; re-en. Sec. 9899, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1172; re-en. Sec. 9899, R.C.M. 1935; R.C.M. 1947, 93-9713.

70-27-204. Amendment of complaint after trial begins. (1) When, upon the trial of any proceeding under this chapter, it appears from the evidence that the defendant has been guilty of either forcible entry or forcible or unlawful detainer and other than the offense charged in the complaint, the judge must order that such complaint be forthwith amended to conform with such proof. Such amendment must be made without any imposition of terms.

(2) No continuance shall be permitted on account of such amendment unless the defendant by affidavit filed shows to the satisfaction of the court good cause therefor.

History: En. Sec. 2093, C. Civ. Proc. 1895; re-en. Sec. 7282, Rev. C. 1907; re-en. Sec. 9900, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1173; re-en. Sec. 9900, R.C.M. 1935; R.C.M. 1947, 93-9714.

70-27-205. Verdict, judgment, and execution. (1) If upon the trial the verdict of the jury or, if the case be tried without a jury, the finding of the court be in favor of the plaintiff and against the defendant, judgment shall be entered for the restitution of the premises; and if the proceeding be for an unlawful detainer after neglect or failure to perform the conditions or covenants of the lease or agreement under which the property is held or after default in the payment of rent, the judgment shall also declare the forfeiture of such lease or agreement.

(2) The jury, or the court if the proceeding be tried without a jury, shall also assess the damages occasioned to the plaintiff by any forcible entry or by any forcible or unlawful detainer alleged in the complaint and proved on the trial and find the amount of any rent due if the alleged unlawful detainer be after default in the payment of rent; and the judgment shall be rendered against the defendant, guilty of the forcible entry or forcible or unlawful detainer, for three times the amount of the damages thus assessed and of the rent found due.

(3) When the proceeding is for an unlawful detainer after default in the payment of the rent and the lease or agreement under which the rent is payable has not by its terms expired, execution upon the judgment shall not be issued until the expiration of 5 days after the entry of the judgment, within which time the tenant or any subtenant or any mortgagee of the term or other party interested in its continuance may pay into court for the landlord the amount found due as rent with interest thereon and the amount of damages found by the jury or the court for the unlawful detainer and the costs of the proceeding, and thereupon the judgment shall be satisfied and the tenant be restored to his estate; but if payment, as here provided, be not made within the 5 days, the judgment may be enforced for its full amount and for the possession of the premises. In all other cases the judgment may be enforced immediately.

History: En. Sec. 2094, C. Civ. Proc. 1895; re-en. Sec. 7283, Rev. C. 1907; re-en. Sec. 9901, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1174; re-en. Sec. 9901, R.C.M. 1935; R.C.M. 1947, 93-9715.

70-27-206. Treble damages. If a person recovers damages for a forcible or unlawful entry in or upon or detention of any building or cultivated real property, judgment may be entered for three times the amount at which the actual damages are assessed.

History: En. Sec. 232, p. 91, Bannack Stat.; re-en. Sec. 253, p. 187, L. 1867; re-en. Sec. 302, p. 93, Cod. Stat. 1871; re-en. Sec. 353, L. 1877; re-en. Sec. 353, 1st Div. Rev. Stat. 1879; re-en. Sec. 365, 1st Div. Comp. Stat. 1887; re-en. Sec. 1304, C. Civ. Proc. 1895; re-en. Sec. 6869, Rev. C. 1907; re-en. Sec. 9478, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 735; re-en. Sec. 9478, R.C.M. 1935; R.C.M. 1947, 93-6105.

70-27-207. Holdover or collusion after notice — treble rent. If any tenant or any person in collusion with the tenant holds over any lands or tenements after demand made and 1 month's notice in writing given, requiring the possession thereof, such person holding over must pay to the landlord treble rent during the time he continues in possession after such notice.

History: En. Sec. 4351, Civ. C. 1895; re-en. Sec. 6077, Rev. C. 1907; re-en. Sec. 8695, R.C.M. 1921; Cal. Civ. C. Sec. 3345; re-en. Sec. 8695, R.C.M. 1935; R.C.M. 1947; 17-502.

70-27-208. Holdover after tenant's notice to quit — treble rent. If any tenant gives notice of his intention to quit the premises and does not deliver up the possession at the time specified in the notice, he must pay to the landlord treble rent during the time he continues in possession after such notice.

History: En. Sec. 4350, Civ. C. 1895; re-en. Sec. 6076, Rev. C. 1907; re-en. Sec. 8694, R.C.M. 1921; Cal. Civ. C. Sec. 3344; re-en. Sec. 8694, R.C.M. 1935; R.C.M. 1947, 17-501.

70-27-209. Treble rent exclusive of interest. The damages prescribed by 70-27-207 and 70-27-208 are exclusive of exemplary damages and interest.

History: En. Sec. 4364, Civ. C. 1895; re-en. Sec. 6085, Rev. C. 1907; re-en. Sec. 8703, R.C.M. 1921; Cal. Civ. C. Sec. 3357; Field Civ. C. Sec. 1876; re-en. Sec. 8703, R.C.M. 1935; R.C.M. 1947, 17-605(part).

70-27-210. Relief against forfeiture of lease in case of hardship. (1) The court may relieve a tenant against a forfeiture of a lease and restore him to his former estate in case of hardship where application for such relief is made within 30 days after the forfeiture is declared by the judgment of the court, as provided in 70-27-205.

(2) The application may be made by a tenant or subtenant or mortgagee of the term or any person interested in the continuance of the term. It must be made upon petition, setting forth the facts upon which relief is sought, and be verified by the applicant.

(3) Notice of the application with a copy of the petition must be served on the plaintiff in the judgment, who may appear and contest the application.

(4) In no case shall the application be granted except on condition that full payment of rent due or full performance of conditions or covenants stipulated, so far as the same is practicable, be made.

History: En. Sec. 2099, C. Civ. Proc. 1895; re-en. Sec. 7288, Rev. C. 1907; re-en. Sec. 9906, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1179; re-en. Sec. 9906, R.C.M. 1935; R.C.M. 1947, 93-9720.

70-27-211. Appeal. An appeal may be taken by the plaintiff or defendant as in other cases.

History: En. Sec. 2096, C. Civ. Proc. 1895; re-en. Sec. 7285, Rev. C. 1907; re-en. Sec. 9903, R.C.M. 1921; re-en. Sec. 9903, R.C.M. 1935; R.C.M. 1947, 93-9717.

70-27-212. General provisions on new trials and appeals applicable. The provisions of Title 25 relative to new trials and appeals, except insofar as they are inconsistent with the provisions of this chapter, apply to the proceedings mentioned in this chapter.

History: En. Sec. 2098, C. Civ. Proc. 1895; re-en. Sec. 7287, Rev. C. 1907; re-en. Sec. 9905, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1178; re-en. Sec. 9905, R.C.M. 1935; R.C.M. 1947, 93-9719.

CHAPTER 28

QUIETING TITLE TO REAL PROPERTY

Part 1 — Quieting Title Generally

Section

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Part 1

Quieting Title Generally

70-28-101. Quiet title action authorized. An action may be brought and prosecuted to final decree, judgment, or order by any person or persons, whether in actual possession or not, claiming title to real estate against any person or persons, both known and unknown, who claim or may claim any right, title, estate, or interest therein or lien or encumbrance thereon adverse to plaintiff's ownership or any cloud upon plaintiff's title thereto, whether such claim or possible claim be present or contingent, including any claim or possible claim of dower, inchoate or accrued, for the purpose of determining such claim or possible claim and quieting the title to said real estate.

History: En. Sec. 233, p. 92, Bannack Stat.; re-en. Sec. 254, p. 188, L. 1867; re-en. Sec. 303, p. 94, Cod. Stat. 1871; re-en. Sec. 354, p. 138, L. 1877; re-en. Sec. 354, 1st Div. Rev. Stat. 1879; re-en. Sec. 366, 1st Div. Comp. Stat. 1887; amd. Sec. 1310, C. Civ. Proc. 1895; re-en. Sec. 6870, Rev. C. 1907; amd. Sec. 1, Ch. 113, L. 1915; re-en. Sec. 9479, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 738; amd. Sec. 1, Ch. 70, L. 1931; re-en. Sec. 9479, R.C.M. 1935; R.C.M. 1947, 93-6203(part).

70-28-102. General procedural provisions applicable. The provisions of Title 25, chapter 3, parts 2 and 3, and Rules 4, 12(a), and 41(e), M.R.Civ.P., so far as they are not in conflict with this part, are applicable to the action herein provided for.

History: En. Sec. 2, Ch. 113, L. 1915; re-en. Sec. 9486, R.C.M. 1921; re-en. Sec. 9486, R.C.M. 1935; R.C.M. 1947, 93-6209; amd. Sec. 22, Ch. 115, L. 1979.

70-28-103. Venue. All actions brought under 70-28-101 must be brought in the county in which the real estate or a portion thereof, as to which the title is sought to be quieted, is situated; provided that if the real estate is situated in more than one county, said action may be brought and prosecuted in either of said counties, and a transcript of the original judgment certified by the clerk of court shall be filed in the office of the clerk of court in the county other than which the action was brought in which any of the real estate affected thereby is situated.

History: En. Sec. 233, p. 92, Bannack Stat.; re-en. Sec. 254, p. 188, L. 1867; re-en. Sec. 303, p. 94, Cod. Stat. 1871; re-en. Sec. 354, p. 138, L. 1877; re-en. Sec. 354, 1st Div. Rev. Stat. 1879; re-en. Sec. 366, 1st Div. Comp. Stat. 1887; amd. Sec. 1310, C. Civ. Proc. 1895; re-en. Sec. 6870, Rev. C. 1907; amd. Sec. 1, Ch. 113, L. 1915; re-en. Sec. 9479, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 738; amd. Sec. 1, Ch. 70, L. 1931; re-en. Sec. 9479, R.C.M. 1935; R.C.M. 1947, 93-6203(part).

70-28-104. Parties defendant — unknown claimants. (1) In any action brought under 70-28-101 and 70-28-103, the plaintiff may join as defendants any or all persons, known or unknown, claiming or who might claim any right, title, estate, or interest in or lien or encumbrance upon the real property described in the complaint adverse to plaintiff's ownership or any cloud upon plaintiff's title, whether such claim or possible claim be present or contingent, including the person or persons in possession if the plaintiff is not in possession.

(2) If the plaintiff shall desire to obtain a complete adjudication of the title to the real estate described in the complaint, he may name as defendants all known persons who assert or who might assert any claim as in this section above specified and may join as defendants all persons unknown who might make any such claim by adding in the caption of the complaint in such action the words "and all other persons, unknown, claiming or who might claim any right, title, estate, or interest in or lien or encumbrance upon the real property described in the complaint adverse to plaintiff's ownership or any cloud upon plaintiff's title thereto, whether such claim or possible claim be present or contingent".

History: En. Sec. 2, Ch. 113, L. 1915; re-en. Sec. 9480, R.C.M. 1921; re-en. Sec. 9480, R.C.M. 1935; R.C.M. 1947, 93-6204; amd. Sec. 182, Ch. 575, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "thereto" after "plaintiff's title" in (1); deleted "or any thereof" after "described in the complaint" in (1) and (2); deleted "including any claim or possible claim of dower, inchoate or accrued" after "contingent" in (1) and (2).

70-28-105. Maintenance of action when no known claimants. If in any case there are no known claimants or possible claimants to any of the property involved in any action contemplated by 70-28-101 through 70-28-109, the action may nevertheless be maintained against all persons unknown claiming or who might claim any right, title, estate, or interest in or lien or encumbrance upon the real property described in the complaint or any part thereof adverse to plaintiff's ownership or any cloud upon plaintiff's title thereto, whether such claim or possible claim be present or contingent, including any claim or possible claim of dower, inchoate or accrued, and such action may be prosecuted to judgment in the same manner and with like effect as though there had been known claimants or possible claimants; and in any such case, the complaint, the affidavit for service by publication, the order for service by publication, and the decree shall state the facts and the summons shall be directed to such unknown persons.

History: En. Sec. 1, Ch. 68, L. 1939; re-en. Sec. 9488.1, R.C.M. 1935; R.C.M. 1947, 93-6212.

70-28-106. Notice of action to be filed with clerk and recorder. Before any order for the publication of summons is granted as provided in Rule 4, M.R.Civ.P., the plaintiff shall file, in the office of the clerk and recorder of each county in which any of the property involved in such action is situated, a notice of the pendency of such action, signed by the plaintiff or his attorney, which notice shall contain:

(1) the title of the court in which such action is filed;

(2) the full caption of the cause;

(3) a complete description of all the property involved in such action; and

(4) a statement of the relief sought by plaintiff.

History: En. Sec. 2, Ch. 113, L. 1915; re-en. Sec. 9481, R.C.M. 1921; re-en. Sec. 9481, R.C.M. 1935; R.C.M. 1947, 93-6205.

70-28-107. Jurisdiction acquired by service — complete adjudication — judgment. (1) Upon the service of summons on all defendants, known and unknown, in the manner provided in Rule 4, M.R.Civ.P., the court in which such action is tried shall have jurisdiction to make a complete adjudication of the title to the lands named in the complaint and the title to which is sought to be quieted, including jurisdiction to direct:

(a) the cancellation of instruments constituting clouds upon such title;

(b) the execution of conveyances where it appears that any party to such action should execute such conveyance or conveyances;

(c) the execution of satisfactions of mortgages and other apparent liens upon such land or any part thereof; or

(d) the doing of any other act of a personal nature necessary to give effect to the rights of the respective parties to such action, as the same may be adjudicated by the court.

(2) When any judgment or decree shall be rendered in such action for a conveyance, release, or acquittance, as above mentioned, and the party or parties against whom the judgment or decree shall be rendered do not comply therewith within the time specified in said judgment or decree for such compliance, such judgment or decree shall have the same operation and effect and be as available as if the conveyance, release, or acquittance had been executed conformably to such judgment or decree.

History: En. Sec. 2, Ch. 113, L. 1915; re-en. Sec. 9487, R.C.M. 1921; amd. Sec. 2, Ch. 55, L. 1923; re-en. Sec. 9487, R.C.M. 1935; R.C.M. 1947, 93-6210(part).

70-28-108. Prerequisites to decree against defendant not present. Before plaintiff shall be entitled to a decree in such action against any defendant who shall not appear therein, he must produce evidence sufficient to prima facie entitle him to relief, and relief shall be granted only to the extent to which such evidence shall prima facie prove him to be entitled to the same; but this provision shall not affect the procedure in or manner of trial of such actions as between the plaintiff and any defendant who shall appear in such action.

History: En. Sec. 2, Ch. 113, L. 1915; re-en. Sec. 9487, R.C.M. 1921; amd. Sec. 2, Ch. 55, L. 1923; re-en. Sec. 9487, R.C.M. 1935; R.C.M. 1947, 93-6210(part).

70-28-109. Who bound by judgment. Every person made a defendant to such action by name and every unknown claimant or possible claimant upon whom service has been made by publication, in accordance with Rule 4, M.R.Civ.P., and who has not appeared in such action shall be bound by the judgment or decree entered in such action, subject to the right of any such defendants to apply for relief in any manner provided by the statutes applicable to the case of a defaulting defendant served only by publication.

History: En. Sec. 2, Ch. 113, L. 1915; re-en. Sec. 9488, R.C.M. 1921; re-en. Sec. 9488, R.C.M. 1935; R.C.M. 1947, 93-6211.

70-28-110. When value of improvements may be allowed as setoff. When damages are claimed for withholding the property recovered upon which permanent improvements have been made by a defendant or those under whom he claims, holding under color of title adversely to the claim of plaintiff, in good faith, the value of such improvements must be allowed as setoff against such damage.

History: En. Sec. 236, p. 92, Bannack Stat.; re-en. Sec. 257, p. 188, L. 1867; re-en. Sec. 306, p. 94, Cod. Stat. 1871; re-en. Sec. 357, p. 138, L. 1877; re-en. Sec. 357, 1st Div. Rev. Stat. 1879; re-en. Sec. 369, 1st Div. Comp. Stat. 1887; re-en. Sec. 1313, C. Civ. Proc. 1895; re-en. Sec. 6873, Rev. C. 1907; re-en. Sec. 9491, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 741; re-en. Sec. 9491, R.C.M. 1935; R.C.M. 1947, 93-6215.

70-28-111. Termination of plaintiff's right during action — damages for withholding. In an action for the recovery of real property where the plaintiff shows a right to recover at the time the action was commenced but it appears that his right has terminated during the pendency of the action, the verdict and judgment must be according to the fact and the plaintiff may recover damages for withholding the property.

History: En. Sec. 235, p. 92, Bannack Stat.; re-en. Sec. 256, p. 188, L. 1867; re-en. Sec. 305, p. 94, Cod. Stat. 1871; re-en. Sec. 356, p. 138, L. 1877; re-en. Sec. 356, 1st Div. Rev. Stat. 1879; re-en. Sec. 368, 1st Div. Comp. Stat. 1887; re-en. Sec. 1312, C. Civ. Proc. 1895; re-en. Sec. 6872, Rev. C. 1907; re-en. Sec. 9490, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 740; re-en. Sec. 9490, R.C.M. 1935; R.C.M. 1947, 93-6214.

70-28-112. Costs. If the defendant in such action disclaim in his answer any interest or estate in the property or suffer judgment to be taken against him without answer, the plaintiff shall not recover costs. But in actions which the plaintiff has brought under section 2326 of the Revised Statutes of the United States to determine an adverse claim, the plaintiff shall recover costs if the defendant does not relinquish in the proper United States land office or disclaim in writing any interest or estate in the property within 20 days from the filing of said adverse claim in such land office.

History: En. Sec. 234, p. 92, Bannack Stat.; re-en. Sec. 255, p. 188, L. 1867; re-en. Sec. 304, p. 93, Cod. Stat. 1871; re-en. Sec. 355, p. 138, L. 1877; re-en. Sec. 355, 1st Div. Rev. Stat. 1879; amd. Sec. 367, 1st Div. Comp. Stat. 1887; re-en. Sec. 1311, C. Civ. Proc. 1895; re-en. Sec. 6871, Rev. C. 1907; re-en. Sec. 9489, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 739; re-en. Sec. 9489, R.C.M. 1935; R.C.M. 1947, 93-6213.

70-28-113. Order for survey or measurement. (1) The court in which an action is pending for the recovery of real property or mining claims or for damages for an injury or to quiet title or to determine adverse claims thereto or a judge thereof may on motion, upon notice by either party, for good cause shown, grant an order allowing to such party the right to enter into or upon the property or mining claim and make survey or measurement thereof or of any tunnels, shafts, or drifts therein for the purpose of the action even though entry for such purpose has to be made through other lands or mining claims belonging to parties to the action.

(2) The order must describe the property, and a copy thereof must be served on the owner or occupant, and thereupon such party may enter the property, with necessary surveyors and assistants, and make such survey and measurement; but if unnecessary damage be done to the property, he is liable therefor.

History: (1)En. Sec. 237, p. 92, Bannack Stat.; re-en. Sec. 258, p. 188, L. 1867; re-en. Sec. 307, p. 95, Cod. Stat. 1871; en. Sec. 357, p. 138, L. 1877; re-en. Sec. 357, 1st Div. Rev. Stat. 1879; re-en. Sec. 369, 1st Div. Comp. Stat. 1887; amd. Sec. 1314, C. Civ. Proc. 1895; re-en. Sec. 6874, Rev. C. 1907; re-en. Sec. 9492, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 742; re-en. Sec. 9492, R.C.M. 1935; Sec. 93-6216, R.C.M. 1947; (2)En. Sec. 238, p. 92, Bannack Stat.; re-en. Sec. 259, p. 188, L. 1867; re-en. Sec. 308, p. 95, Cod. Stat. 1871; re-en. Sec. 358, p. 139, L. 1877; re-en. Sec. 358, 1st Div. Rev. Stat. 1879; re-en. Sec. 370, 1st Div. Comp. Stat. 1887; re-en. Sec. 1315, C. Civ. Proc. 1895; re-en. Sec. 6875, Rev. C. 1907; re-en. Sec. 9493, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 743; re-en. Sec. 9493, R.C.M. 1935; Sec 93-6217, R.C.M. 1947; R.C.M. 1947, 93-6216, 93-6217.

Part 2

Property Granted to Heirs of Deceased Entryman — Quiet Title

70-28-201. Action authorized. Whenever the government of the United States has granted lands in the state of Montana to the heirs of a deceased entryman, any person who claims an estate of inheritance or interest in such lands may bring and maintain an action in rem against all the world in the district court for the county in which such real property is situated to establish his title to such property and to determine all adverse claims thereto. Any number of separate parcels of land claimed by the plaintiff may be included in the same action.

History: En. Sec. 1, Ch. 15, L. 1915; re-en. Sec. 9501, R.C.M. 1921; re-en. Sec. 9501, R.C.M. 1935; R.C.M. 1947, 93-6225.

70-28-202. General procedural provisions applicable. Except as herein otherwise provided, all the provisions and rulings of law relating to evidence, pleading, practice, new trials, and appeals applicable to other civil actions shall apply to the actions hereby authorized.

History: En. Sec. 12, Ch. 15, L. 1915; re-en. Sec. 9512, R.C.M. 1921; re-en. Sec. 9512, R.C.M. 1935; R.C.M. 1947, 93-6236(part).

70-28-203. Remedies cumulative. The remedies provided for by this part shall be deemed cumulative and in addition to any other remedy now or hereafter provided by law for quieting or establishing title to real property.

History: En. Sec. 14, Ch. 15, L. 1915; re-en. Sec. 9515, R.C.M. 1921; re-en. Sec. 9515, R.C.M. 1935; R.C.M. 1947, 93-6239.

70-28-204. Executor, administrator, or guardian as party. An executor, administrator, or guardian or other person claiming an interest by deed of conveyance or otherwise may maintain, as plaintiff, and may appear and defend in the action herein provided for.

History: **En. Sec. 14, Ch. 15, L. 1915; re-en. Sec. 9514, R.C.M. 1921; re-en. Sec. 9514, R.C.M. 1935; R.C.M. 1947, 93-6238.**

70-28-205. Complaint. The action shall be commenced by the filing of a verified complaint in which the parties so commencing the same shall be named as plaintiffs and the defendants shall be described as "all persons claiming any interest in or lien upon the real property herein described or any part thereof" and which shall:

(1) contain a statement of the facts enumerated in 70-28-201;
(2) contain a particular description of such real property; and
(3) specify the estate, title, or interest of the plaintiff therein.

History: **En. Sec. 2, Ch. 15, L. 1915; re-en. Sec. 9502, R.C.M. 1921; re-en. Sec. 9502, R.C.M. 1935; R.C.M. 1947, 93-6226.**

70-28-206. Affidavit to accompany complaint. (1) At the time of filing the complaint, the plaintiff shall file with the same his affidavit fully and explicitly setting forth and showing:

(a) the character of his estate, right, title, interest, or claim in the property;

(b) whether or not he has ever made any conveyance of his interest in said property or any part thereof and, if so, when and to whom; also a statement of any and all existing mortgages, deeds of trust, judgments, or other liens thereon;

(c) when and where the deceased entryman of said property died;

(d) what kin or relationship the claimant bore to the entryman at the time of his death; and

(e) the names and residences of any other persons who are next of kin or entitled to succeed to any portion of the lands, the subject of said action, and the names of and residences of all persons who have liens upon the property or any part thereof adversely to the plaintiff if he knows or has been informed or has been able to discover any such person.

(2) If the plaintiff is unable to state any one or more of the matters herein required, he shall set forth and show fully and explicitly the reasons for such inability.

(3) Such affidavit shall constitute a part of the judicial record.

(4) If the plaintiff be a person under guardianship, the affidavit shall be made by his guardian.

History: **En. Sec. 3, Ch. 15, L. 1915; re-en. Sec. 9503, R.C.M. 1921; re-en. Sec. 9503, R.C.M. 1935; R.C.M. 1947, 93-6227; amd. Sec. 183, Ch. 575, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted "judicial record" for "judgment roll" in (3).

70-28-207. Summons — issuance and form. Upon the filing of the complaint and affidavit, a summons must be issued under the seal of the court, which shall contain the name of the court and county in which the action is brought, the name of the plaintiff, and the particular description of the real property involved and shall be directed to "all persons claiming any interest in or lien upon the real property herein described or any part thereof" as defendants and shall be substantially in the following form:

"In the district court of the .... judicial district of the state of Montana, in and for the county of ..... Plaintiff, vs. all persons claiming any interest in or lien upon the real property herein described or any part thereof, defendants.

The state of Montana to all persons claiming any interest in or lien upon the real property herein described or any part thereof, defendants, Greeting:

You are hereby required to appear and answer the complaint of ...., plaintiff, filed with the clerk of the above-entitled court, within 60 days after the first publication of this summons, and set forth what interest or lien, if any, you have in or upon that certain real property or any part thereof situated in the county of ...., state of Montana, particularly described as follows: (Here insert description.)

And you are hereby notified that, unless you so appear and answer, the plaintiff will apply to the court for the relief demanded in the complaint, to wit: (Here insert a statement of the relief so demanded.)

Witness my hand and the seal of said court this .... day of ...., A.D. 19...

..............., Clerk"

History: En. Sec. 4, Ch. 15, L. 1915; re-en. Sec. 9504, R.C.M. 1921; re-en. Sec. 9504, R.C.M. 1935; R.C.M. 1947, 93-6228.

70-28-208. Publication and posting of summons. (1) The summons shall be published in a newspaper of general circulation published in the county in which the action is brought. The newspaper in which such publication is to be made shall be designated by an order of the court or judge thereof to be signed and filed with the clerk. No other order for the publication of the summons shall be necessary, nor shall any affidavit therefor be required, nor need any copy of the complaint be served, except as hereinafter required. The summons shall be published at least once a week for a period of 5 weeks and to each publication thereof shall be appended a memorandum, signed by the plaintiff's attorney, in substance as follows "The following persons are said to claim an interest in or lien upon said property, adverse to plaintiff." (Give names and addresses as above provided.)

(2) A copy of the summons together with a copy of the foregoing memorandum shall be posted in a conspicuous place on each separate parcel of the property described in the complaint within 10 days after the first publication of the summons.

History: En. Sec. 5, Ch. 15, L. 1915; re-en. Sec. 9505, R.C.M. 1921; re-en. Sec. 9505, R.C.M. 1935; R.C.M. 1947, 93-6229.

70-28-209. Personal service of summons — service by mail. (1) If the affidavit discloses the name of any person next of kin or relationship to the deceased entryman or entitled to succeed to any part of said property or the name of a person who claims or may claim an interest by mortgage, trust deed, judgment, or other lien, the summons shall also be personally served upon such person, if he can be found within the state, together with a copy of the complaint and a copy of said affidavit, during the period of the publication of the summons, and to the copy of the summons delivered to any such person there shall be appended a copy of the memorandum provided in 70-28-208.

(2) If such person resides out of the state, a copy of the summons, memorandum, complaint, and affidavit shall be, within 10 days after the first

publication of the summons, deposited in the United States post office, enclosed in a sealed envelope, postage prepaid, addressed to such person at the address given in the affidavit or, if no address be given therein, then at the county seat of the county in which the action was brought. If such person resides within the state and could not with due diligence be found within the state within the period of the publication of the summons, then said notice aforesaid shall be mailed to him, as above provided, forthwith upon the expiration of said period of said publication.

History: En. Sec. 6, Ch. 15, L. 1915; re-en. Sec. 9506, R.C.M. 1921; re-en. Sec. 9506, R.C.M. 1935; R.C.M. 1947, 93-6230.

70-28-210. Jurisdiction acquired by service — complete. Upon the completion of the publication and posting of the summons and its service upon and mailing to the persons, if any, upon whom it is hereby directed to be so specially served, the court shall have full and complete jurisdiction over the plaintiff and the property and of the person of every one having or claiming any estate, right, title, or interest in or to or lien upon such property or any part thereof and shall be deemed to have obtained the possession and control of said property for the purposes of the action and shall have full and complete jurisdiction to render the judgment therein which is provided for in this part.

History: En. Sec. 7, Ch. 15, L. 1915; re-en. Sec. 9507, R.C.M. 1921; re-en. Sec. 9507, R.C.M. 1935; R.C.M. 1947, 93-6231.

70-28-211. Depositions. (1) At any time after the issuance of the summons, any party to the action may take depositions therein in conformity to law, upon notice to the adverse party sought to be bound by such depositions and who has appeared in the action, if any, and upon notice filed with the clerk.

(2) The depositions may be used by any party against any other party giving or receiving the notice (except the clerk), subject to all just exceptions.

History: En. Sec. 12, Ch. 15, L. 1915; re-en. Sec. 9512, R.C.M. 1921; re-en. Sec. 9512, R.C.M. 1935; R.C.M. 1947, 93-6236(part).

70-28-212. Time for appearance by defendant — answer. At any time within the first 60 days from the first publication of the summons or within such further time, not exceeding 30 days, as the court may for good cause grant, any person having or claiming any estate, right, title, or interest in or to or lien upon said property or any part thereof may appear and make himself a party to the action by pleading to the complaint. All answers must be verified and set forth specifically the kin or relationship of the deceased entryman and the estate, right, title, interest, or lien so claimed.

History: En. Sec. 8, Ch. 15, L. 1915; re-en. Sec. 9508, R.C.M. 1921; re-en. Sec. 9508, R.C.M. 1935; R.C.M. 1947, 93-6232.

70-28-213. Recording of notice by plaintiff and defendant. (1) The plaintiff must, at the time of filing the complaint, and every defendant to claim or claiming any affirmative relief must, at the time of filing his answer, record in the office of the county clerk and recorder of the county in which the property is situated a notice of the pendency of the action containing the object of the action or the defense and a particular description of the property affected thereby.

(2) The clerk and recorder shall record the same in a book of the miscellaneous records of his office and make a reference as to the date and time of the filing of such notice and, when recorded, to the book and page record thereof.

History: En. Sec. 9, Ch. 15, L. 1915; re-en. Sec. 9509, R.C.M. 1921; re-en. Sec. 9509, R.C.M. 1935; R.C.M. 1947, 93-6233.

70-28-214. Default judgment prohibited — proof and inquiry required. No judgment in any such action shall be given by default, but the court must require proof of the facts alleged in the complaint and other pleadings, and the court must further make diligent inquiry of the plaintiff and all defendants appearing concerning the next of kin of said deceased entryman, and upon such examination should any heir be discovered who has not been served or who has not appeared, the court may order such heir brought in if necessary for the determination herein provided for.

History: En. Sec. 10, Ch. 15, L. 1915; re-en. Sec. 9510, R.C.M. 1921; re-en. Sec. 9510, R.C.M. 1935; R.C.M. 1947, 93-6234.

70-28-215. Judgment — nature and effect — recording. (1) The judgment shall ascertain and determine the heirship of said deceased entryman and all estates, rights, titles, interests, and claims in and to said property and every part thereof, whether the same be legal or equitable, present or future, vested or contingent, or whether the same consists of mortgages or liens of any description, and shall be binding and conclusive upon every person who, at the time of the commencement of the action, had or claimed to have any estate, right, title, or interest in or to said property or any part thereof and upon every person claiming under him by title subsequent to the commencement of the action.

(2) A certified copy of the judgment in such action shall be recorded in the office of the clerk and recorder of the county in which said action was commenced, and any party or the successor in interest of any party to said action may at his option file for record in the office of the clerk and recorder of such county the entire judicial record in said action.

History: En. Sec. 11, Ch. 15, L. 1915; re-en. Sec. 9511, R.C.M. 1921; re-en. Sec. 9511, R.C.M. 1935; R.C.M. 1947, 93-6235; amd. Sec. 184, Ch. 575, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "judicial record" for "judgment roll" in (2); made a minor change in punctuation.

70-28-216. Subsequent action — notice to original parties required. Whenever judgment in an action hereby authorized shall have been entered as to any real property, no other action relative to the same property or any part thereof maintained under this part shall be tried until proof shall first have been made to the court that all persons who appeared in the first action or their successors in interest have been personally served with the papers mentioned in 70-28-209, either within or without this state, more than 1 month before the time to plead expired.

History: En. Sec. 13, Ch. 15, L. 1915; re-en. Sec. 9513, R.C.M. 1921; re-en. Sec. 9513, R.C.M. 1935; R.C.M. 1947, 93-6237.

Part 3

Entry Townsite Deeds

Part Compiler's Comments

1981 Title: The title to Ch. 102, L. 1981 (SB 36), read: "An act to provide a method for district court judges as ex officio probate judges to issue deeds for entry townsite lots that were not originally issued or were lost."

70-28-301. Entry townsite land defined. "Entry townsite land" means land upon which an entry was made on or before July 1, 1921, by a probate court of any county in the territory or state of Montana for a townsite and a patent for the townsite was issued by the United States to the probate court or judge under the provisions of an act of congress entitled "An Act for the Relief of the Inhabitants of Cities and Towns Upon Public Lands", approved March 2, 1867, or other and subsequent acts of congress relating to entering lands for townsite purposes.

History: **En. Sec. 1, Ch. 102, L. 1981.**

70-28-302. Petition for deed — qualified claimants. A person may petition for a deed to a lot on entry townsite land from the district court of the county in which the entry townsite land is located if:

(1) the claimant entered the lot and is in possession of the lot; or

(2) the claimant is a successor in interest, by purchase or other lawful method of transferring an interest in land, of a person who originally entered the lot.

History: **En. Sec. 2, Ch. 102, L. 1981.**

70-28-303. Notice requirements. Upon petition by a claimant for a deed to a lot on entry townsite land, the claimant shall provide published notice of his claim, notice filed with the county clerk and recorder, and personal service as may be required for quiet title actions under Title 70, chapter 28, part 1.

History: **En. Sec. 3, Ch. 102, L. 1981.**

70-28-304. Judge to issue deed — requirements. If there are no valid conflicting claims to the lot on the entry townsite, the district court judge, as ex officio probate judge of the county, shall issue the claimant a good and sufficient deed for the lot on the entry townsite land upon finding in a hearing that:

(1) the petitioner is a qualified claimant under 70-28-302; and

(2) (a) no deed has been issued by a probate or district court judge of the county where the entry townsite land is located for the claimed lot; or

(b) a deed for the claimed lot has been issued but not recorded and has been lost or cannot be found.

History: **En. Sec. 4, Ch. 102, L. 1981.**

CHAPTER 29

PARTITION OF REAL PROPERTY

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Section

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Part 1

Preliminary Procedure

70-29-101. Action for partition authorized — who may bring. When several cotenants hold and are in possession of real property as joint tenants or tenants in common, in which one or more of them have an estate of inheritance or for life or lives or for years, an action may be brought by one or more of such persons for a partition thereof, according to the respective rights of the persons interested therein, and for a sale of such property or a part thereof if it appears that a partition cannot be made without a great prejudice to the owners.

History: En. Sec. 492, p. 140, Bannack Stat.; re-en. Sec. 264, p. 190, L. 1867; re-en. Sec. 313, p. 97, Cod. Stat. 1871; re-en. Sec. 364, p. 139, L. 1877; re-en. Sec. 364, 1st Div. Rev. Stat. 1879; re-en. Sec. 377, 1st Div. Comp. Stat. 1887; re-en. Sec. 1340, C. Civ. Proc. 1895; re-en. Sec. 6883, Rev. C. 1907; re-en. Sec. 9516, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 752; re-en. Sec. 9516, R.C.M. 1935; R.C.M. 1947, 93-6301.

70-29-102. Action by infant. (1) An action for the partition of real property shall not be brought by an infant, except by the written authority of the district judge of the county in which the property or a part thereof is situated. The authority shall not be given unless the district judge is satisfied, by affidavit or other competent evidence, that the interests of the infant will be promoted by bringing the action.

(2) A judgment for a partition shall not be rendered in such an action unless the court is satisfied that the interests of the infant will be promoted thereby and that fact is expressly recited in the judgment.

(3) A guardian ad litem for an infant party, in an action for partition, can be appointed only by the court or judge and must give an undertaking in a sum fixed by the judge for the faithful discharge of his trust, which undertaking must be approved by the judge and filed with the clerk.

History: En. Sec. 1341, C. Civ. Proc. 1895; re-en. Sec. 6884, Rev. C. 1907; re-en. Sec. 9517, R.C.M. 1921; re-en. Sec. 9517, R.C.M. 1935; R.C.M. 1947, 93-6302.

70-29-103. Complaint — contents. The interests of all the persons in the property, whether such persons be known or unknown, must be set forth in the complaint specifically and particularly, as far as known to the plaintiff; and if one or more of the parties or the share or quantity of interest of any of the parties be unknown to the plaintiff or be uncertain or contingent or the ownership of the inheritance depend upon the executory devise or the remainder be a contingent remainder so that such parties cannot be named, that fact must be set forth in the complaint.

History: En. Sec. 493, p. 140, Bannack Stat.; re-en. Sec. 265, p. 190, L. 1867; re-en. Sec. 314, p. 97, Cod. Stat. 1871; re-en. Sec. 365, p. 139, L. 1877; re-en. Sec. 365, 1st Div. Rev. Stat. 1879; re-en. Sec. 378, 1st Div. Comp. Stat. 1887; re-en. Sec. 1344, C. Civ. Proc. 1895; re-en. Sec. 6887, Rev. C. 1907; re-en. Sec. 9520, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 753; re-en. Sec. 9520, R.C.M. 1935; R.C.M. 1947, 93-6305.

70-29-104. Who must be parties — permissible plaintiffs. (1) The following must be parties to an action for partition:

(a) every person having an undivided share, in possession or otherwise, in the property as tenant in fee, for life, or for years;

(b) every person entitled to the reversion, remainder, or inheritance of an undivided share, after the determination of a particular estate therein;

(c) every person who by any contingency contained in a devise or grant or otherwise is or may become entitled to a beneficial interest in an undivided share thereof;

(d) every person having an inchoate right of dower in an undivided share in the property; and

(e) every person having a right of dower in the property or any part thereof which has not been admeasured.

(2) But no person other than a joint tenant or a tenant in common of the property shall be a plaintiff in the action.

History: **En. Sec. 1342, C. Civ. Proc. 1895; re-en. Sec. 6885, Rev. C. 1907; re-en. Sec. 9518, R.C.M. 1921; re-en. Sec. 9518, R.C.M. 1935; R.C.M. 1947, 93-6303.**

70-29-105. Who may be joined as defendants. (1) The plaintiff may, at his election, make a tenant in dower, for life or for years, of the entire property or a creditor or other person having a lien or interest which attaches to the entire property a defendant in the action. In that case the final judgment may either award to such a party his or her entire right and interest or the proceeds thereof or may reserve and leave unaffected his or her right or interest or any portion thereof.

(2) A person specified in this section who is not made a party is not affected by the judgment in the action.

History: **En. Sec. 1343, C. Civ. Proc. 1895; re-en. Sec. 6886, Rev. C. 1907; re-en. Sec. 9519, R.C.M. 1921; re-en. Sec. 9519, R.C.M. 1935; R.C.M. 1947, 93-6304.**

70-29-106. Unnecessary to join grantees or lienholders not of record. No person having a conveyance of or claiming a lien on the property or some part of it need be made a party to the action unless such conveyance or lien appear of record.

History: **En. Sec. 266, p. 190, L. 1867; re-en. Sec. 315, p. 97, Cod. Stat. 1871; re-en. Sec. 366, p. 140, L. 1877; re-en. Sec. 366, 1st Div. Rev. Stat. 1879; re-en. Sec. 379, 1st Div. Comp. Stat. 1887; re-en. Sec. 1345, C. Civ. Proc. 1895; re-en. Sec. 6888, Rev. C. 1907; re-en. Sec. 9521, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 754; re-en. Sec. 9521, R.C.M. 1935; R.C.M. 1947, 93-6306.**

70-29-107. Lienholders of record as parties. If it appears to the court, by the certificate of the clerk of the court and county clerk and recorder or by the sworn or verified statement of any person who may have examined or searched the records, that there are outstanding liens or encumbrances of record upon such real property or any part or portion thereof which existed and were of record at the time of the commencement of the action, and the persons holding such liens are not made parties to the action, the court must either order such persons to be made parties to the action by an amendment or supplemental complaint or appoint a referee to ascertain whether or not such liens or encumbrances have been paid or, if not paid, what amount remains due thereon and their order among the liens or encumbrances severally held by such persons and the parties to the action and whether the amount remaining due thereon has been secured in any manner and, if secured, the nature and extent of the security.

History: **En. Sec. 501, p. 142, Bannack Stat.; en. Sec. 273, p. 191, L. 1867; re-en. Sec. 322, p. 98, Cod. Stat. 1871; re-en. Sec. 373, p. 142, L. 1877; re-en. Sec. 373, 1st Div. Rev. Stat. 1879; re-en. Sec. 386, 1st Div. Comp. Stat. 1887; re-en. Sec. 1353, C. Civ. Proc. 1895; re-en. Sec. 6896, Rev. C.**

1907; re-en. Sec. 9529, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 761; re-en. Sec. 9529, R.C.M. 1935; R.C.M. 1947, 93-6314.

70-29-108. Lienholders of record to be notified. (1) The plaintiff must cause a notice to be served a reasonable time previous to the day for appearance before the referee appointed, as provided in 70-29-107, on each person having outstanding liens of record who is not a party to the action to appear before the referee at a specified time and place to make proof by his own affidavit or otherwise of the amount due or to become due, contingently or absolutely, thereon.

(2) In case such person be absent or his residence be unknown, service may be made by publication or notice to his agents, under the direction of the court, in such manner as may be proper.

(3) The report of the referee thereon must be made to the court and must be confirmed, modified, or set aside and a new reference ordered, as the justice of the case may require.

History: En. Sec. 502, p. 142, Bannack Stat.; re-en. Sec. 274, p. 192, L. 1867; re-en. Sec. 323, p. 99, Cod. Stat. 1871; re-en. Sec. 374, p. 142, L. 1877; re-en. Sec. 374, 1st Div. Rev. Stat. 1879; re-en. Sec. 387, 1st Div. Comp. Stat. 1887; re-en. Sec. 1354, C. Civ. Proc. 1895; re-en. Sec. 6897, Rev. C. 1907; re-en. Sec. 9530, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 762; re-en. Sec. 9530, R.C.M. 1935; R.C.M. 1947, 93-6315.

70-29-109. Notice of action to be filed with clerk — lis pendens. (1) Immediately after filing the complaint in the district court, the plaintiff must file in the office of the county clerk and recorder of the county or of the several counties in which the property is situated a notice of the pendency of the action containing:

(a) the names of the parties so far as known;
(b) the object of the action; and
(c) a description of the property to be affected thereby.

(2) From the time of filing such notice, all persons shall be deemed to have notice of the pendency of the action.

History: En. Sec. 495, p. 141, Bannack Stat.; re-en. Sec. 267, p. 190, L. 1867; re-en. Sec. 316, p. 97, Cod. Stat. 1871; re-en. Sec. 367, p. 140, L. 1877; re-en. Sec. 367, 1st Div. Rev. Stat. 1879; re-en. Sec. 380, 1st Div. Comp. Stat. 1887; amd. Sec. 1346, C. Civ. Proc. 1895; re-en. Sec. 6889, Rev. C. 1907; re-en. Sec. 9522, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 755; re-en. Sec. 9522, R.C.M. 1935; R.C.M. 1947, 93-6307.

70-29-110. Summons — to whom directed. The summons must be directed to all the joint tenants and tenants in common and all persons having an interest in or any liens of record by mortgage, judgment, or otherwise upon the property or upon any particular portion thereof and generally to all persons unknown who have or claim any interest in the property.

History: En. Sec. 496, p. 141, Bannack Stat.; re-en. Sec. 268, p. 190, L. 1867; re-en. Sec. 317, p. 97, Cod. Stat. 1871; re-en. Sec. 368, p. 140, L. 1877; re-en. Sec. 368, 1st Div. Rev. Stat. 1879; re-en. Sec. 381, 1st Div. Comp. Stat. 1887; re-en. Sec. 1347, C. Civ. Proc. 1895; re-en. Sec. 6890, Rev. C. 1907; re-en. Sec. 9523, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 756; re-en. Sec. 9523, R.C.M. 1935; R.C.M. 1947, 93-6308.

70-29-111. Unknown and out-of-state parties — how served. (1) If a party having a share or interest is unknown or any one of the known parties resides out of the state or cannot be found therein and such fact is made to appear by affidavit, the summons may be served on such absent or unknown party by publication, as in other cases.

(2) When publication is made, the summons, as published, must be accompanied by a general statement of the nature of the action and a brief description of the property which is the subject of the action.

History: En. Sec. 497, p. 141, Bannack Stat.; re-en. Sec. 269, p. 191, L. 1867; re-en. Sec. 318, p. 98, C. Stat. 1871; re-en. Sec. 369, p. 140, L. 1877; re-en. Sec. 369, 1st Div. Rev. Stat. 1879; re-en. Sec. 382, 1st Div. Comp. Stat. 1887; amd. Sec. 1348, C. Civ. Proc. 1895; re-en. Sec. 6891, Rev. C. 1907; re-en. Sec. 9524, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 757; re-en. Sec. 9524, R.C.M. 1935; R.C.M. 1947, 93-6309.

70-29-112. Answer — contents. The defendants who have been personally served with the summons and a copy of the complaint or who have appeared without such service must set forth in their answers, fully and particularly, the origin, nature, and extent of their respective interests in the property, and if such defendants claim a lien on the property by mortgage, judgment, or otherwise, they are deemed to have waived their right to such lien unless they state:

(1) the original amount and date of the same and the sum remaining due thereon;

(2) whether the same has been secured in any other way or not; and

(3) if secured, the nature and extent of such security.

History: En. Sec. 498, p. 141, Bannack Stat.; amd. Sec. 270, p. 191, L. 1867; re-en. Sec. 319, p. 98, Cod. Stat. 1871; re-en. Sec. 370, p. 141, L. 1877; re-en. Sec. 370, 1st Div. Rev. Stat. 1879; re-en. Sec. 383, 1st Div. Comp. Stat. 1887; amd. Sec. 1349, C. Civ. Proc. 1895; re-en. Sec. 6892, Rev. C. 1907; re-en. Sec. 9525, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 758; re-en. Sec. 9525, R.C.M. 1935; R.C.M. 1947, 93-6310.

70-29-113. Death or incompetency of parties — proceedings not delayed. (1) If during the pendency of the action any of the parties dies or becomes seriously mentally ill or otherwise incompetent, the proceedings may not for that cause be delayed or suspended, but the attorney who has appeared for the party may continue to represent such interest. If any party has not appeared by an attorney, the court shall appoint an attorney to represent the interest which was held by the party until his heirs or legal representatives or successors in interest have appeared in the action.

(2) An attorney so appointed shall be allowed by the court a reasonable compensation for his services, which may be taxed as costs against the share or interest represented by the attorney and may be adjudged a lien thereon, in the discretion of the court.

History: En. Sec. 1357, C. Civ. Proc. 1895; re-en. Sec. 6900, Rev. C. 1907; re-en. Sec. 9533, R.C.M. 1921; re-en. Sec. 9533, R.C.M. 1935; R.C.M. 1947, 93-6318; amd. Sec. 23, Ch. 115, L. 1979.

Part 2

Trial and Judgment

70-29-201. Trial of title or interest of parties. The right of the several parties, plaintiff as well as defendant, may be put in issue, tried, and determined in such action. The title or interest of the plaintiff in the property, as stated in the complaint, may be controverted by the answer. The title or interest of any defendant in the property, as stated in the complaint, may also be controverted by his answer or the answer of any other defendant, and the title or interest of any defendant, as stated in his answer, may be controverted by the answer of any other defendant and the issues joined as prescribed in Title 25, which may be tried before a jury if the court so direct.

History: En. Sec. 499, p. 141, Bannack Stat.; re-en. Sec. 271, p. 191, L. 1867; re-en. Sec. 320, p. 98, Cod. Stat. 1871; re-en. Sec. 371, p. 140, L. 1877; re-en. Sec. 371, 1st Div. Rev. Stat. 1879; re-en. Sec. 384, 1st Div. Comp. Stat. 1887; en. Sec. 1350, C. Civ. Proc. 1895; re-en. Sec. 6893, Rev. C. 1907; re-en. Sec. 9526, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 759; re-en. Sec. 9526, R.C.M. 1935; R.C.M. 1947, 93-6311.

70-29-202. Court to order sale or partition — appointment of referees. (1) If it be alleged in the complaint and established by evidence or if it appear by the evidence without such allegation in the complaint to the satisfaction of the court that the property or any part is so situated that the partition cannot be made without great prejudice to the owners, the court may order a sale thereof; otherwise, upon the requisite proofs being made, it must order a partition according to the respective rights of the parties as ascertained by the court and appoint three referees therefor and must designate the portion to remain undivided for the owners whose interests remain unknown or are not ascertained.

(2) The court, with the consent of the parties, may appoint a single referee instead of three referees in the proceedings under the provisions of this chapter, and the single referee, when thus appointed, has all the powers and may perform all the duties required of the three referees.

History: (1)En. Sec. 503, p. 142, Bannack Stat.; re-en. Sec. 275, p. 192, L. 1867; re-en. Sec. 324, p. 99, Cod. Stat. 1871; re-en. Sec. 375, p. 142, L. 1877; re-en. Sec. 375, 1st Div. Rev. Stat. 1879; re-en. Sec. 388, 1st Div. Comp. Stat. 1887; re-en. Sec. 1355, C. Civ. Proc. 1895; re-en. Sec. 6898, Rev. C. 1907; re-en. Sec. 9531, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 763; re-en. Sec. 9531, R.C.M. 1935; Sec. 93-6316, R.C.M. 1947; (2)En. Sec. 537, p. 148, Bannack Stat.; re-en. Sec. 309, p. 196, L. 1867; re-en. Sec. 358, p. 104, L. 1871; rep. Sec. 674, p. 215, L. 1877; en. Sec. 1395, C. Civ. Proc. 1895; re-en. Sec. 6938, Rev. C. 1907; re-en. Sec. 9571, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 797; re-en. Sec. 9571, R.C.M. 1935; Sec. 93-6356, R.C.M. 1947; R.C.M. 1947, 93-6316, 93-6356.

70-29-203. Determination of title required before judgment of sale. When a sale of the premises is necessary, the title must be ascertained by proof to the satisfaction of the court before the judgment of sale can be made, and where service of the summons has been made by publication, like proof must be required of the right of the absent or unknown parties before such judgment is rendered, except where there are several unknown parties having an interest in the property, their rights may be considered together in the action and not as between themselves.

History: En. Sec. 499, p. 141, Bannack Stat.; re-en. Sec. 271, p. 191, L. 1867; re-en. Sec. 320, p. 98, Cod. Stat. 1871; re-en. Sec. 371, p. 140, L. 1877; re-en. Sec. 371, 1st Div. Rev. Stat. 1879; re-en. Sec. 384, 1st Div. Comp. Stat. 1887; en. Sec. 1351, C. Civ. Proc. 1895; re-en. Sec. 6894, Rev. C. 1907; re-en. Sec. 9527, R.C.M. 1921; re-en. Sec. 9527, R.C.M. 1935; R.C.M. 1947, 93-6312.

70-29-204. Partial partition. Whenever from any cause it is in the opinion of the court impracticable or highly inconvenient to make a complete partition in the first instance among all the parties in interest, the court may first ascertain and determine the shares or interests respectively held by the original cotenants and thereupon adjudge and cause a partition to be made as if such original cotenants were the parties and sole parties in interest and the only parties to the action and thereafter may proceed in like manner to adjudge and make partition separately of each share or portion so ascertained and allotted, as between those claiming under the original tenant to whom the same shall have been so set apart, or may allow them to remain tenants in common thereof, as they may desire.

History: En. Sec. 272, p. 191, L. 1867; re-en. Sec. 321, p. 98, Cod. Stat. 1871; re-en. Sec. 372, p. 141, L. 1877; re-en. Sec. 372, 1st Div. Rev. Stat. 1879; re-en. Sec. 385, 1st Div. Comp. Stat. 1887; re-en. Sec. 1352, C. Civ. Proc. 1895; re-en. Sec. 6895, Rev. C. 1907; re-en. Sec. 9528, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 760; re-en. Sec. 9528, R.C.M. 1935; R.C.M. 1947, 93-6313.

70-29-205. Partition according to rights of parties — roads. (1) In making partition, the referees must divide the property and allot the several portions thereof to the respective parties, quality and quantity relatively considered, according to the respective rights of the parties as determined by the court, pursuant to the provisions of this chapter, designating the several portions by proper landmarks, and may employ a surveyor with the necessary assistants to aid them.

(2) Before making partition or sale, the referees may, whenever it will be for the advantage of those interested, set apart a portion of the property for a way, road, or street, and the portion so set apart shall not be assigned to any of the parties or sold but shall remain an open and public way, road, or street unless the referees shall set the same apart as a private way for the use of the parties interested or some of them, their heirs, and assigns, in which case it shall remain such private way. Whenever the referees have laid out on any tract of land roads sufficient, in the judgment of said referees, to accommodate the public and private wants, they shall report that fact to the court, and upon the confirmation of their report all other roads on said tract shall cease to be public highways.

History: En. Sec. 504, p. 143, Bannack Stat.; re-en. Sec. 276, p. 192, L. 1867; re-en. Sec. 325, p. 99, Cod. Stat. 1871; re-en. Sec. 376, p. 143, L. 1877; re-en. Sec. 376, 1st Div. Rev. Stat. 1879; re-en. Sec. 389, 1st Div. Comp. Stat. 1887; en. Sec. 1358, C. Civ. Proc. 1895; re-en. Sec. 6901, Rev. C. 1907; re-en. Sec. 9534, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 764; re-en. Sec. 9534, R.C.M. 1935; R.C.M. 1947, 93-6319.

70-29-206. Procedure in relation to lots and subdivisions. When the site of an incorporated city or town is included within the exterior boundaries of the property to be partitioned, on said fact being established by evidence, the following proceedings shall be had:

(1) The court shall thereupon direct the referees to survey and appraise the entire property to be partitioned by actual lots and subdivisions then existing in the actual possession of the several tenants in common, exclusive of the value of improvements thereon, first setting apart necessary portions of the property for ways, roads, and streets, as in 70-29-205 provided, and to report such survey and separate appraisement on each lot and subdivision to the court. The court may confirm, change, modify, or set aside the report in whole or in part and, if necessary, appoint new referees.

(2) When, after the final confirmation of the report of such survey and appraisement, it shall appear by evidence to the satisfaction of the court that an equitable partition of the whole property is impracticable and a sale of the site of such city, town, or any portion thereof will be for the best interest of the owners of the whole property, it shall order a sale thereof; provided that within 60 days thereafter any tenant in common or tenants in common having improvements erected on any town or city lot or subdivision included in such order of sale shall have the prior right to purchase the same at such

appraised valuation and pay into court the amount so appraised as the value thereof, and upon such payment, the title shall vest in such purchaser or purchasers, and the court shall cause to be executed by said referees a deed for such lot or subdivision in fee and in severalty to such purchaser or purchasers. Such further proceedings shall then be had as to the remainder of the property and the money so paid to the court as by this chapter provided.

History: En. Sec. 1356, C. Civ. Proc. 1895; re-en. Sec. 6899, Rev. C. 1907; re-en. Sec. 9532, R.C.M. 1921; re-en. Sec. 9532, R.C.M. 1935; R.C.M. 1947, 93-6317.

70-29-207. Allotment of shares of land — improvements. In all cases the court shall direct the referees, in making partition of land, to allot the share of each of the parties owning an interest in the whole or in any part of the premises sought to be partitioned and to locate the share of each cotenant so as to embrace as far as practicable the improvements made by such cotenant upon the property, and the value of the improvements made by the tenants in common must be excluded from the valuation in making allotments, and the land must be valued without regard to such improvements, in case the same can be done without material injury to the rights and interests of the other tenants in common owning such land.

History: En. Sec. 1359, C. Civ. Proc. 1895; re-en. Sec. 6902, Rev. C. 1907; re-en. Sec. 9535, R.C.M. 1921; re-en. Sec. 9535, R.C.M. 1935; R.C.M. 1947, 93-6320(part).

70-29-208. Allotment of land to grantee of tenant in common. Whenever it shall appear in an action for the partition of lands that one or more of the tenants in common, being the owner of an undivided interest in the tract of land sought to be partitioned, has sold to another person a specific tract by metes and bounds out of the common land and executed to the purchaser a deed of conveyance, purporting to convey the whole title to such specific tract to the purchaser in fee and in severalty, the land described in such deed shall be allotted and set apart in partition to such purchaser, his heirs, or assigns or in such other manner as shall make such deed effectual as a conveyance of the whole title to such segregated parcel if such tract or tracts of land can be so allotted or set apart without material injury to the rights and interests of the other cotenants who may not have joined in such conveyance.

History: En. Sec. 1359, C. Civ. Proc. 1895; re-en. Sec. 6902, Rev. C. 1907; re-en. Sec. 9535, R.C.M. 1921; re-en. Sec. 9535, R.C.M. 1935; R.C.M. 1947, 93-6320(part).

70-29-209. Compensation of one party by another in certain cases of partition. (1) When it appears that a partition cannot be made equal between the parties according to their respective rights without prejudice to the rights and interests of some of them and a partition be ordered, the court may adjudge compensation to be made by one party to another on account of the inequality, but such compensation shall not be required to be made to others by owners unknown or by an infant unless it appears that such infant has personal property sufficient for that purpose and that his interest will be promoted thereby.

(2) In all cases the court has power to make compensatory adjustment between the respective parties according to the ordinary principles of equity.

History: En. Sec. 532, p. 147, Bannack Stat.; re-en. Sec. 304, p. 196, L. 1867; re-en. Sec. 353, p. 104, Cod. Stat. 1871; rep. Sec. 627, p. 215, L. 1877; en. Sec. 1387, C. Civ. Proc. 1895; re-en. Sec.

6930, Rev. C. 1907; re-en. Sec. 9563, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 792; re-en. Sec. 9563, R.C.M. 1935; R.C.M. 1947, 93-6348.

70-29-210. Consent of guardian to share of ward. The general guardian of an infant and the guardian entitled to the custody and management of the estate of a seriously mentally ill person or other person adjudged incapable of conducting his own affairs, who is interested in real estate held in joint tenancy or in common or in any other manner so as to authorize his being made a party to an action, may agree upon the share to be set off to such infant or other person entitled and may execute a release, in his behalf, to the owners of the shares of the parts to which they may be respectively entitled, upon an order of the court.

History: En. Sec. 535, p. 148, Bannack Stat.; re-en. Sec. 307, p. 196, L. 1867; re-en. Sec. 356, p. 104, Cod. Stat. 1871; rep. Sec. 627, p. 215, L. 1877; en. Sec. 1390, C. Civ. Proc. 1895; re-en. Sec. 6933, Rev. C. 1907; re-en. Sec. 9566, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 795; re-en. Sec. 9566, R.C.M. 1935; R.C.M. 1947, 93-6351; amd. Sec. 24, Ch. 115, L. 1979.

70-29-211. Referees to make report. The referees must make a report of their proceedings, specifying therein the manner in which they executed their trust and describing the property divided and the shares allotted to each party with a particular description of each share.

History: En. Sec. 505, p. 143, Bannack Stat.; re-en. Sec. 277, p. 192, L. 1867; re-en. Sec. 326, p. 99, Cod. Stat. 1871; re-en. Sec. 377, p. 143, L. 1877; re-en. Sec. 377, 1st Div. Rev. Stat. 1879; re-en. Sec. 390, 1st Div. Comp. Stat. 1887; re-en. Sec. 1360, C. Civ. Proc. 1895; re-en. Sec. 6903, Rev. C. 1907; re-en. Sec. 9536, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 765; re-en. Sec. 9536, R.C.M. 1935; R.C.M. 1947, 93-6321.

70-29-212. Judgment upon confirmation of report — effect. (1) The court may confirm, change, modify, or set aside the report and if necessary appoint new referees.

(2) Upon the report being confirmed, judgment must be rendered that such partition be effectual forever, which judgment is binding and conclusive on all:

(a) persons named as parties to the action and their legal representatives, who have at the time any interest in the property divided or any part thereof, as owners in fee or as tenants for life or for years or as entitled to the reversion, remainder, or the inheritance of such property or any part thereof after the determination of a particular estate therein, and who by any contingency may be entitled to a beneficial interest in the property or who have an interest in any undivided share thereof, as tenants for years or for life;

(b) persons interested in the property, who may be unknown, to whom notice has been given of the action for partition by publication;

(c) other persons claiming from such parties or persons or either of them.

(3) No judgment is invalidated by reason of the death of any party before final judgment or decree, but such judgment or decree is as conclusive against the heirs, legal representatives, or assigns of such decedent as if it had been entered before his death.

History: En. Sec. 506, p. 143, Bannack Stat.; amd. Sec. 278, p. 192, L. 1867; re-en. Sec. 327, p. 100, Cod. Stat. 1871; amd. Sec. 378, p. 143, L. 1877; re-en. Sec. 378, 1st Div. Rev. Stat. 1879; re-en. Sec. 391, 1st Div. Comp. Stat. 1887; en. Sec. 1361, C. Civ. Proc. 1895; re-en. Sec. 6904, Rev. C. 1907; re-en. Sec. 9537, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 766; re-en. Sec. 9537, R.C.M. 1935; R.C.M. 1947, 93-6322.

70-29-213. Judgment not to affect certain tenants for years. The judgment does not affect tenants for years, less than 10, to the whole of the property which is the subject of the partition.

History: En. Sec. 507, p. 143, Bannack Stat.; re-en. Sec. 279, p. 193, L. 1867; re-en. Sec. 328, p. 100, Cod. Stat. 1871; re-en. Sec. 379, p. 144, L. 1877; re-en. Sec. 379, 1st Div. Rev. Stat. 1879; re-en. Sec. 392, 1st Div. Comp. Stat. 1887; re-en. Sec. 1362, C. Civ. Proc. 1895; re-en. Sec. 6905, Rev. C. 1907; re-en. Sec. 9538, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 767; re-en. Sec. 9538, R.C.M. 1935; R.C.M. 1947, 93-6323.

70-29-214. Status of estate for years when partial sale ordered. When a part of the property only is ordered to be sold, if there be an estate for life or years in an undivided share of the whole property, such estate may be set off in any part of the property not ordered to be sold.

History: En. Sec. 510, p. 143, Bannack Stat.; re-en. Sec. 282, p. 193, L. 1867; re-en. Sec. 331, p. 100, Cod. Stat. 1871; re-en. Sec. 382, p. 144, L. 1877; re-en. Sec. 382, 1st Div. Rev. Stat. 1879; re-en. Sec. 395, 1st Div. Comp. Stat. 1887; re-en. Sec. 1365, C. Civ. Proc. 1895; re-en. Sec. 6908, Rev. C. 1907; re-en. Sec. 9541, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 770; re-en. Sec. 9541, R.C.M. 1935; R.C.M. 1947, 93-6326.

70-29-215. Lien on undivided interest — status after partition. When a lien is on an undivided interest or estate of any of the parties, such lien, if a partition be made, shall thenceforth be a charge only on the share assigned to such party, but such share must be first charged with its just proportion of the costs of the partition in preference to such lien.

History: En. Sec. 509, p. 143, Bannack Stat.; re-en. Sec. 281, p. 193, L. 1867; re-en. Sec. 330, p. 100, Cod. Stat. 1871; re-en. Sec. 381, p. 144, L. 1877; re-en. Sec. 381, 1st Div. Rev. Stat. 1879; re-en. Sec. 394, 1st Div. Comp. Stat. 1887; re-en. Sec. 1364, C. Civ. Proc. 1895; re-en. Sec. 6907, Rev. C. 1907; re-en. Sec. 9540, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 769; re-en. Sec. 9540, R.C.M. 1935; R.C.M. 1947, 93-6325.

70-29-216. Abstract of title — when cost of allowed — filing and inspection. (1) If it appears to the court that it was necessary to have made an abstract of the title to the property to be partitioned and such abstract shall have been procured by the plaintiff or if the plaintiff shall have failed to have the same made before the commencement of the action and any one of the defendants shall have had such abstract afterward made, the cost of the abstract, with interest thereon from the time the same is subject to the inspection of the respective parties to the action, must be allowed and taxed.

(2) Whenever such abstract is procured by the plaintiff, before the commencement of the action he must file with his complaint a notice that an abstract of the title has been made and is subject to the inspection and use of all the parties to the action, designating therein where the abstract will be kept for inspection. But if the plaintiff shall have failed to procure such abstract before commencing the action and any defendant shall procure the same to be made, he shall, as soon as he has directed it to be made, file a notice thereof in the action with the clerk of the court, stating who is making the same and where it will be kept when finished.

(3) The court or judge thereof may direct, from time to time during the progress of the action, who shall have the custody of the abstract.

History: En. Sec. 1397, C. Civ. Proc. 1895; re-en. Sec. 6940, Rev. C. 1907; re-en. Sec. 9573, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 799; re-en. Sec. 9573, R.C.M. 1935; R.C.M. 1947, 93-6358.

70-29-217. Abstract — how made and verified. The abstract mentioned in 70-29-216 may be made by any competent searcher of records and need not be certified by the county clerk and recorder or other officer, but instead thereof it must be verified by the affidavit of the person making it to the effect that he believes it to be correct; but the same may be corrected from time to time, if found incorrect, under the direction of the court.

History: En. Sec. 1398, C. Civ. Proc. 1895; re-en. Sec. 6941, Rev. C. 1907; re-en. Sec. 9574, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 800; re-en. Sec. 9574, R.C.M. 1935; R.C.M. 1947, 93-6359.

70-29-218. Costs of partition — apportionment among parties — lien. The costs of partition, including reasonable counsel fees, expended by the plaintiff or either of the defendants for the common benefit, fees of referees, or other disbursements must be paid by the parties respectively entitled to share in the lands divided, in proportion to their respective interests therein, and may be included and specified in the judgment. In that case, they shall be a lien on the several shares and the judgment may be enforced by execution against such shares and against other property held by the respective parties. When, however, litigation arises between some of the parties only, the court may require the expense of such litigation to be paid by the parties thereto or any of them.

History: En. Sec. 536, p. 148, Bannack Stat.; re-en. Sec. 308, p. 196, L. 1867; re-en. Sec. 357, p. 104, L. 1871; rep. Sec. 674, p. 215, L. 1877; en. Sec. 1394, C. Civ. Proc. 1895; re-en. Sec. 6937, Rev. C. 1907; re-en. Sec. 9570, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 796; re-en. Sec. 9570, R.C.M. 1935; R.C.M. 1947, 93-6355.

70-29-219. Expenses of referees and surveyor. The expenses of the referees, including those of a surveyor and his assistants, when employed, must be ascertained and allowed by the court, and the amount thereof, together with the fees allowed by the court in its discretion to the referees, must be apportioned among the different parties to the action equitably.

History: En. Sec. 508, p. 143, Bannack Stat.; re-en. Sec. 280, p. 193, L. 1867; re-en. Sec. 329, p. 100, Cod. Stat. 1871; re-en. Sec. 380, p. 144, L. 1877; re-en. Sec. 380, 1st Div. Rev. Stat. 1879; re-en. Sec. 393, 1st Div. Comp. Stat. 1887; re-en. Sec. 1363, C. Civ. Proc. 1895; re-en. Sec. 6906, Rev. C. 1907; re-en. Sec. 9539, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 768; re-en. Sec. 9539, R.C.M. 1935; R.C.M. 1947, 93-6324.

70-29-220. Disbursements by party — interest allowed. Whenever during the progress of the action for partition any disbursements shall have been made under the direction of the court or the judge thereof by a party thereto, interest must be allowed thereon from the time of making such disbursements.

History: En. Sec. 1399, C. Civ. Proc. 1895; re-en. Sec. 6942, Rev. C. 1907; re-en. Sec. 9575, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 801; re-en. Sec. 9575, R.C.M. 1935; R.C.M. 1947, 93-6360.

70-29-221. Expenses of previous litigation. If it appear that other actions or proceedings have been necessarily prosecuted or defended by any one of the tenants in common for the protection, confirmation, or perfecting of the title or setting the boundaries or making a survey or surveys of the estate partitioned, the court shall allow to the parties to the action who have paid the expense of such litigation or other proceedings all the expenses necessarily incurred therein, except counsel fees, which shall have accrued to the common benefit of the other tenants in common, with interest thereon from the date of making the expenditures, and the same must be pleaded and allowed by the court and included in the final judgment and shall be a lien upon the share of each tenant, respectively, in proportion to his interest and shall be enforced in the same manner as taxable costs of partition are taxed and collected.

History: En. Sec. 1396, C. Civ. Proc. 1895; re-en. Sec. 6939, Rev. C. 1907; re-en. Sec. 9572, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 798; re-en. Sec. 9572, R.C.M. 1935; R.C.M. 1947, 93-6357.

Part 3

Sale and Disposition of Proceeds

70-29-301. Sale to be at public auction — notice. All sales of real property made by referees under this chapter must be made at public auction to the highest bidder, upon notice published in the manner required for the sale of real property on execution. The notice must state the terms of sale, and if the property or any part of it is to be sold subject to a prior estate, charge, or lien, that must be stated in the notice.

History: En. Sec. 515, p. 145, Bannack Stat.; re-en. Sec. 287, p. 194, L. 1867; re-en. Sec. 336, p. 101, Cod. Stat. 1871; re-en. Sec. 387, p. 146, L. 1877; re-en. Sec. 387, 1st Div. Rev. Stat. 1879; re-en. Sec. 400, 1st Div. Comp. Stat. 1887; re-en. Sec. 1370, C. Civ. Proc. 1895; re-en. Sec. 6913, Rev. C. 1907; re-en. Sec. 9546, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 775; re-en. Sec. 9546, R.C.M. 1935; R.C.M. 1947, 93-6331.

70-29-302. Terms of sale to be made known. In all cases of sales of property, the terms must be made known at the time; and if the premises consist of distinct farms and lots, they must be sold separately.

History: En. Sec. 522, p. 146, Bannack Stat.; re-en. Sec. 294, p. 195, L. 1867; re-en. Sec. 343, p. 102, Cod. Stat. 1871; re-en. Sec. 394, p. 147, L. 1877; re-en. Sec. 394, 1st Div. Rev. Stat. 1879; re-en. Sec. 407, 1st Div. Comp. Stat. 1887; re-en. Sec. 1377, C. Civ. Proc. 1895; re-en. Sec. 6920, Rev. C. 1907; re-en. Sec. 9553, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 782; re-en. Sec. 9553, R.C.M. 1935; R.C.M. 1947, 93-6338.

70-29-303. Who may not be purchasers. (1) Neither of the referees nor any person for the benefit of either of them can be interested in any purchase, nor can a guardian of an infant party be interested in the purchase of any real property being the subject of the action except for the benefit of the infant.

(2) All sales contrary to the provisions of this section are void.

History: En. Sec. 523, p. 146, Bannack Stat.; re-en. Sec. 295, p. 195, L. 1867; re-en. Sec. 344, p. 102, Cod. Stat. 1871; re-en. Sec. 395, p. 147, L. 1877; re-en. Sec. 395, 1st Div. Rev. Stat. 1879; re-en. Sec. 408, 1st Div. Comp. Stat. 1887; re-en. Sec. 1378, C. Civ. Proc. 1895; re-en. Sec. 6921, Rev. C. 1907; re-en. Sec. 9554, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 783; re-en. Sec. 9554, R.C.M. 1935; R.C.M. 1947, 93-6339.

70-29-304. Party or encumbrancer as purchaser. When a party entitled to a share of the property or an encumbrancer entitled to have his lien paid out of the sale becomes a purchaser, the referees may take his receipt for so much of the proceeds of the sale as belongs to him.

History: En. Sec. 526, p. 146, Bannack Stat.; re-en. Sec. 298, p. 195, L. 1867; re-en. Sec. 347, p. 103, Cod. Stat. 1871; rep. Sec. 627, p. 215, L. 1877; en. Sec. 1381, C. Civ. Proc. 1895; re-en. Sec. 6924, Rev. C. 1907; re-en. Sec. 9557, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 786; re-en. Sec. 9557, R.C.M. 1935; R.C.M. 1947, 93-6342.

70-29-305. Court to direct terms of credit and investment. The court must, in the order of sale, direct the terms of credit which may be allowed for the purchase money of any portion of the premises of which it may direct a sale on credit and for that portion of which the purchase money is required by the provisions herein contained to be invested for the benefit of unknown owners, infants, or parties out of this state.

History: **En. Sec. 516, p. 145, Bannack Stat.; re-en. Sec. 288, p. 194, L. 1867; re-en. Sec. 337, p. 101, Cod. Stat. 1871; re-en. Sec. 388, p. 146, L. 1877; re-en. Sec. 388, 1st Div. Rev. Stat. 1879; re-en. Sec. 401, 1st Div. Comp. Stat. 1887; re-en. Sec. 1371, C. Civ. Proc. 1895; re-en. Sec. 6914, Rev. C. 1907; re-en. Sec. 9547, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 776; re-en. Sec. 9547, R.C.M. 1935; R.C.M. 1947, 93-6332.**

70-29-306. Security for sales on credit. The referees may take separate mortgages and other securities for the whole or convenient portions of the purchase money of such parts of the property as are directed by the court to be sold on credit for the:

(1) shares of any known owner of full age, in the name of such owner;

(2) shares of an infant, in the name of the guardian of such infant; and

(3) other shares, in the name of the clerk of the court of the county and his successors in office.

History: **En. Sec. 517, p. 145, Bannack Stat.; re-en. Sec. 289, p. 194, L. 1867; re-en. Sec. 338, p. 101, Cod. Stat. 1871; re-en. Sec. 389, p. 146, L. 1877; re-en. Sec. 389, 1st Div. Rev. Stat. 1879; re-en. Sec. 402, 1st Div. Comp. Stat. 1887; re-en. Sec. 1372, C. Civ. Proc. 1895; re-en. Sec. 6915, Rev. C. 1907; re-en. Sec. 9548, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 777; re-en. Sec. 9548, R.C.M. 1935; R.C.M. 1947, 93-6333.**

70-29-307. Security taken and investment made in name of clerk. When the security of the proceeds of sale is taken or when an investment of any such proceeds is made, it must be done, except as herein otherwise provided, in the name of the clerk of the court where the papers are filed and his successors in office, who must hold the same for the use and benefit of the persons interested, subject to the order of the court.

History: **En. Sec. 529, p. 147, Bannack Stat.; re-en. Sec. 301, p. 195, L. 1867; re-en. Sec. 350, p. 103, Cod. Stat. 1871; rep. Sec. 627, p. 215, L. 1877; en. Sec. 1384, C. Civ. Proc. 1895; re-en. Sec. 6927, Rev. C. 1907; re-en. Sec. 9560, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 789; re-en. Sec. 9560, R.C.M. 1935; R.C.M. 1947, 93-6345.**

70-29-308. Agreement of parties as to security. When security is taken by the referees on a sale and the parties interested in such security, by an instrument in writing under their hands delivered to the referees, agree upon the shares and proportions to which they are respectively entitled or when shares and proportions have been previously adjudged by the court, such securities must be taken in the names of and payable to the parties respectively entitled thereto and must be delivered to such parties upon their receipt therefor. Such agreement and receipt must be returned and filed with the clerk of the court.

History: **En. Sec. 530, p. 147, Bannack Stat.; re-en. Sec. 302, p. 196, L. 1867; re-en. Sec. 351, p. 104, Cod. Stat. 1871; rep. Sec. 627, p. 215, L. 1877; en. Sec. 1385, C. Civ. Proc. 1895; re-en. Sec. 6928, Rev. C. 1907; re-en. Sec. 9561, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 790; re-en. Sec. 9561, R.C.M. 1935; R.C.M. 1947, 93-6346.**

70-29-309. Referees' report of sale. (1) After completing a sale of the property or any part thereof ordered to be sold, the referees must report the same to the court with:

(a) a description of the different parcels of land sold to each purchaser;

(b) the price paid or secured;

(c) the terms and conditions of the sale; and

(d) the securities, if any, taken.

(2) The report must be filed in the office of the clerk of the court and a certified copy thereof in the office of the county clerk and recorder of the county where the property is situated.

History: En. Sec. 524, p. 146, Bannack Stat.; re-en. Sec. 296, p. 195, L. 1867; re-en. Sec. 345, p. 102, Cod. Stat. 1871; re-en. Sec. 396, p. 147, L. 1877; re-en. Sec. 396, 1st Div. Rev. Stat. 1879; re-en. Sec. 409, 1st Div. Comp. Stat. 1887; re-en. Sec. 1379, C. Civ. Proc. 1895; re-en. Sec. 6922, Rev. C. 1907; re-en. Sec. 9555, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 784; re-en. Sec. 9555, R.C.M. 1935; R.C.M. 1947, 93-6340.

70-29-310. Execution of conveyances and taking of security. If the sale be confirmed by the court, an order must be entered directing the referees to execute conveyances and take securities pursuant to such sale which they are hereby authorized to do. Such order may also give directions to them respecting the disposition of the proceeds of sale.

History: En. Sec. 525, p. 146, Bannack Stat.; re-en. Sec. 297, p. 195, L. 1867; re-en. Sec. 346, p. 103, Cod. Stat. 1871; rep. Sec. 627, p. 215, L. 1877; en. Sec. 1380, C. Civ. Proc. 1895; re-en. Sec. 6923, Rev. C. 1907; re-en. Sec. 9556, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 785; re-en. Sec. 9556, R.C.M. 1935; R.C.M. 1947, 93-6341.

70-29-311. Conveyances to be recorded — bar against parties. The conveyances must be recorded in the county where the premises are situated and shall be a bar against all persons interested in the property in any way who shall have been named as parties in the action and against all such parties and persons as were unknown, if the summons was served by publication, and against all persons claiming under them or either of them and against all persons having unrecorded deeds or liens at the commencement of the action.

History: En. Sec. 527, p. 146, Bannack Stat.; re-en. Sec. 299, p. 195, L. 1867; re-en. Sec. 348, p. 103, Cod. Stat. 1871; rep. Sec. 627, p. 215, L. 1877; en. Sec. 1382, C. Civ. Proc. 1895; re-en. Sec. 6925, Rev. C. 1907; re-en. Sec. 9558, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 787; re-en. Sec. 9558, R.C.M. 1935; R.C.M. 1947, 93-6343.

70-29-312 through 70-29-320 reserved.

70-29-321. Priorities for application of proceeds. The proceeds of the sale of encumbered property must be applied under the direction of the court as follows:

(1) to pay its just proportion of the general costs of the action;

(2) to pay the costs of the reference;

(3) to satisfy and cancel of record the several liens in their order of priority by payment of the sums due and to become due, the amount due to be verified by affidavit at the time of payment;

(4) the residue among the owners of the property sold, according to their respective shares therein.

History: En. Sec. 511, p. 144, Bannack Stat.; re-en. Sec. 283, p. 193, L. 1867; re-en. Sec. 332, p. 100, Cod. Stat. 1871; re-en. Sec. 383, p. 145, L. 1877; re-en. Sec. 383, 1st Div. Rev. Stat. 1879; re-en. Sec. 396, 1st Div. Comp. Stat. 1887; re-en. Sec. 1366, C. Civ. Proc. 1895; re-en. Sec. 6909, Rev. C. 1907; re-en. Sec. 9542, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 771; re-en. Sec. 9542, R.C.M. 1935; R.C.M. 1947, 93-6327.

70-29-322. Other securities to be exhausted first. Whenever any party to an action who holds a lien upon the property or any part thereof has other securities for the payment of the amount of such lien, the court may, in its discretion, order such securities to be exhausted before a distribution of the proceeds of sale or may order a just deduction to be made from the amount of the lien on the property on account thereof.

History: En. Sec. 512, p. 144, Bannack Stat.; re-en. Sec. 284, p. 193, L. 1867; re-en. Sec. 333, p. 100, Cod. Stat. 1871; re-en. Sec. 384, p. 145, L. 1877; re-en. Sec. 384, 1st Div. Rev. Stat. 1879; re-en. Sec. 397, 1st Div. Comp. Stat. 1887; re-en. Sec. 1367, C. Civ. Proc. 1895; re-en. Sec. 6910, Rev. C. 1907; re-en. Sec. 9543, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 772; re-en. Sec. 9543, R.C.M. 1935; R.C.M. 1947, 93-6328.

70-29-323. Disposition of proceeds generally. The proceeds of sale and the securities taken by the referees or any part thereof must be distributed by them to the persons entitled thereto whenever the court so directs. But in case no direction be given, all of such proceeds and securities must be paid into the court or deposited therein or as directed by the court.

History: En. Sec. 513, p. 144, Bannack Stat.; re-en. Sec. 285, p. 194, L. 1867; re-en. Sec. 334, p. 101, Cod. Stat. 1871; re-en. Sec. 385, p. 145, L. 1877; re-en. Sec. 385, 1st Div. Rev. Stat. 1879; re-en. Sec. 398, 1st Div. Comp. Stat. 1887; re-en. Sec. 1368, C. Civ. Proc. 1895; re-en. Sec. 6911, Rev. C. 1907; re-en. Sec. 9544, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 773; re-en. Sec. 9544, R.C.M. 1935; R.C.M. 1947, 93-6329.

70-29-324. Continuation of action when proceeds paid into court. When the proceeds of the sale of any share or parcel belonging to persons who are parties to the action and who are known are paid into the court, the action may continue as between such parties for the determination of their respective claims thereto which must be ascertained and adjudged by the court. Further testimony may be taken in court or by a referee, at the discretion of the court, and the court may, if necessary, require such parties to present the facts or law in controversy by pleadings, as in an original action.

History: En. Sec. 514, p. 144, Bannack Stat.; re-en. Sec. 286, p. 194, L. 1867; re-en. Sec. 335, p. 101, Cod. Stat. 1871; re-en. Sec. 386, p. 145, L. 1877; re-en. Sec. 386, 1st Div. Rev. Stat. 1879; re-en. Sec. 399, 1st Div. Comp. Stat. 1887; re-en. Sec. 1369, C. Civ. Proc. 1895; re-en. Sec. 6912, Rev. C. 1907; re-en. Sec. 9545, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 774; re-en. Sec. 9545, R.C.M. 1935; R.C.M. 1947, 93-6330.

70-29-325. Future interests — ascertainment — share of proceeds. In all cases of sales when it appears that any person has a vested or contingent or future right or estate in any of the property sold, the court must ascertain and settle the proportional value of such contingent or vested right or estate and must direct such proportion of the proceeds of the sale to be invested, secured, or paid over, in such manner as to protect the rights and interests of the parties.

History: En. Sec. 521, p. 146, Bannack Stat.; re-en. Sec. 293, p. 195, L. 1867; re-en. Sec. 342, p. 102, Cod. Stat. 1871; re-en. Sec. 393, p. 147, L. 1877; re-en. Sec. 393, 1st Div. Rev. Stat. 1879; re-en. Sec. 406, 1st Div. Comp. Stat. 1887; re-en. Sec. 1376, C. Civ. Proc. 1895; re-en. Sec. 6919, Rev. C. 1907; re-en. Sec. 9552, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 781; re-en. Sec. 9552, R.C.M. 1935; R.C.M. 1947, 93-6337.

70-29-326. Tenant for life or years — compensation upon sale. (1) The person entitled to a tenancy for life or years or who has a right or inchoate right of dower, whose estate has been sold, is entitled to receive such sum as may be deemed a reasonable satisfaction for such estate and which the person so entitled may consent to accept instead thereof by an instrument in writing filed with the clerk of the court. Upon the filing of such consent, the clerk must enter the same in the minutes of the court.

(2) If such consent be not given, filed, and entered, as provided in subsection (1), at or before a judgment of sale is rendered, the court must ascertain and determine what proportion of the proceeds of the sale, after deducting expenses, will be a just and reasonable sum to be allowed on account of such estate and must order the same to be paid to such party or deposited in court for him or her, as the case may require.

(3) If the persons entitled to such estate for life or years be unknown, the court must provide for the protection of their rights in the same manner, as far as may be, as if they were known and had appeared.

History: (1)En. Sec. 518, p. 145, Bannack Stat.; re-en. Sec. 290, p. 194, L. 1867; re-en. Sec. 339, p. 101, Cod. Stat. 1871; re-en. Sec. 390, p. 146, L. 1877; re-en. Sec. 390, 1st Div. Rev. Stat. 1879; re-en. Sec. 403, 1st Div. Comp. Stat. 1887; re-en. Sec. 1373, C. Civ. Proc. 1895; re-en. Sec. 6916, Rev. C. 1907; re-en. Sec. 9549, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 778; re-en. Sec. 9549, R.C.M. 1935; Sec. 93-6334, R.C.M. 1947; (2)En. Sec. 519, p. 145, Bannack Stat.; re-en. Sec. 291, p. 195, L. 1867; re-en. Sec. 340, p. 102, Cod. Stat. 1871; re-en. Sec. 391, p. 146, L. 1877; re-en. Sec. 391, 1st Div. Rev. Stat. 1879; re-en. Sec. 404, 1st Div. Comp. Stat. 1887; re-en. Sec. 1374, C. Civ. Proc. 1895; re-en. Sec. 6917, Rev. C. 1907; re-en. Sec. 9550, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 779; re-en. Sec. 9550, R.C.M. 1935; Sec. 93-6335, R.C.M. 1947; (3)En. Sec. 520, p. 146, Bannack Stat.; re-en. Sec. 292, p. 195, L. 1867; re-en. Sec. 341, p. 102, Cod. Stat. 1871; re-en. Sec. 392, p. 147, L. 1877; re-en. Sec. 392, 1st Div. Rev. Stat. 1879; re-en. Sec. 405, 1st Div. Comp. Stat. 1887; re-en. Sec. 1375, C. Civ. Proc. 1895; re-en. Sec. 6918, Rev. C. 1907; re-en. Sec. 9551, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 780; re-en. Sec. 9551, R.C.M. 1935; Sec. 93-6336, R.C.M. 1947; R.C.M. 1947, 93-6334, 93-6335, 93-6336.

70-29-327. Infant's share of proceeds — payment to guardian. When the share of an infant is sold, the proceeds of the sale may be paid by the referee making the sale to his general guardian or the special guardian appointed for him in the action upon giving the security required by law or directed by order of the court.

History: En. Sec. 533, p. 148, Bannack Stat.; re-en. Sec. 305, p. 196, L. 1867; re-en. Sec. 354, p. 104, Cod. Stat. 1871; rep. Sec. 627, p. 215, L. 1877; en. Sec. 1388, C. Civ. Proc. 1895; re-en. Sec. 6931, Rev. C. 1907; re-en. Sec. 9564, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 793; re-en. Sec. 9564, R.C.M. 1935; R.C.M. 1947, 93-6349.

70-29-328. Incompetent's share of proceeds — payment to guardian. The guardian who may be entitled to the custody and management of the estate of a seriously mentally ill person or other person adjudged incapable of conducting his own affairs, whose interest in real property has been sold, may receive in behalf of such person his share of the proceeds of such real property from the referees on executing with sufficient sureties an undertaking, approved by a judge of the court, that he will faithfully discharge the trust reposed in him and will render a true and just account to the person entitled or to his legal representative.

History: En. Sec. 534, p. 148, Bannack Stat.; re-en. Sec. 306, p. 196, L. 1867; re-en. Sec. 355, p. 104, Cod. Stat. 1871; rep. Sec. 627, p. 215, L. 1877; en. Sec. 1389, C. Civ. Proc. 1895; re-en. Sec. 6932, Rev. C. 1907; re-en. Sec. 9565, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 794; re-en. Sec. 9565, R.C.M. 1935; R.C.M. 1947, 93-6350; amd. Sec. 25, Ch. 115, L. 1979.

70-29-329. Proceeds of sale belonging to persons unknown or out-of-state — how invested. Where there are proceeds of a sale belonging to an unknown owner or to a person without the state who has no legal representative within it, the same must be invested in bonds of this state or the United States for the benefit of the persons entitled thereto.

History: En. Sec. 528, p. 146, Bannack Stat.; re-en. Sec. 300, p. 195, L. 1867; re-en. Sec. 349, p. 103, Cod. Stat. 1871; rep. Sec. 627, p. 215, L. 1877; en. Sec. 1383, C. Civ. Proc. 1895; re-en. Sec. 6926, Rev. C. 1907; re-en. Sec. 9559, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 788; re-en. Sec. 9559, R.C.M. 1935; R.C.M. 1947, 93-6344.

70-29-330. Duty of clerk as to security and investments. The clerk of court in whose name a security is taken or by whom an investment is made and his successors in office must:

(1) receive the interest and principal as it becomes due and apply and invest the same as the court may direct;

(2) deposit with the county treasurer all securities taken; and

(3) keep an account of investments and moneys received by him thereon and the disposition thereof in a book provided and kept for that purpose in the clerk's office, free for inspection by all persons.

History: En. Sec. 531, p. 147, Bannack Stat.; re-en. Sec. 303, p. 196, L. 1867; re-en. Sec. 352, p. 104, Cod. Stat. 1871; rep. Sec. 627, p. 215, L. 1877; en. Sec. 1386, C. Civ. Proc. 1895; re-en. Sec. 6929, Rev. C. 1907; re-en. Sec. 9562, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 791; re-en. Sec. 9562, R.C.M. 1935; R.C.M. 1947, 93-6347.

CHAPTER 30

EMINENT DOMAIN

Part 1 — General and Substantive Provisions

Section

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Part 1

General and Substantive Provisions

70-30-101. Eminent domain defined. Eminent domain is the right of the state to take private property for public use. This right may be exercised in the manner provided in this chapter.

History: En. Sec. 579, p. 189, L. 1877; re-en. Sec. 579, 1st Div. Rev. Stat. 1879; re-en. Sec. 597, 1st Div. Comp. Stat. 1887; amd. Sec. 2210, C. Civ. Proc. 1895; re-en. Sec. 7330, Rev. C. 1907; re-en. Sec. 9933, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1237; re-en. Sec. 9933, R.C.M. 1935; R.C.M. 1947, 93-9901.

70-30-102. Public uses enumerated. Subject to the provisions of this chapter, the right of eminent domain may be exercised in behalf of the following public uses:

(1) all public uses authorized by the government of the United States;

(2) public buildings and grounds for the use of the state and all other public uses authorized by the legislature of the state;

(3) public buildings and grounds for the use of any county, city or town, or school district; canals, aqueducts, flumes, ditches, or pipes conducting water, heat, or gas for the use of the inhabitants of any county, city, or town; raising the banks of streams, removing obstructions therefrom, and widening, deepening, or straightening their channels; roads, streets, and alleys and all other public uses for the benefit of any county, city, or town or the inhabitants thereof, which may be authorized by the legislature; but the mode of apportioning and collecting the costs of such improvements shall be such as may be provided in the statutes or ordinances by which the same may be authorized;

(4) wharves, docks, piers, chutes, booms, ferries, bridges, of all kinds, private roads, plank and turnpike roads, railroads, canals, ditches, flumes, aqueducts, and pipes for public transportation, supplying mines, mills, and smelters for the reduction of ores and farming neighborhoods with water and drainage and reclaiming lands and for floating logs and lumber on streams not navigable and sites for reservoirs necessary for collecting and storing water. However, such reservoir sites must possess a public use demonstrable to the district court as the highest and best use of the land.

(5) roads, tunnels, ditches, flumes, pipes, and dumping places for working mines, mills, or smelters for the reduction of ores; also outlets, natural or otherwise, for the flow, deposit, or conduct of tailings or refuse matter from mines, mills, and smelters for the reduction of ores; also an occupancy in common by the owners or the possessors of different mines of any place for the flow, deposit, or conduct of tailings or refuse matter from their several mines, mills, or smelters for reduction of ores and sites for reservoirs necessary for collecting and storing water. However, such reservoir sites must possess a public use demonstrable to the district court as the highest and best use of the land.

(6) private roads leading from highways to residences or farms;

(7) telephone or electric light lines;

(8) telegraph lines;

(9) sewerage of any city, county, or town or any subdivision thereof, whether incorporated or unincorporated, or of any settlement consisting of not less than 10 families or of any public buildings belonging to the state or to any college or university;

(10) tramway lines;

(11) electric power lines;

(12) logging railways;

(13) temporary logging roads and banking grounds for the transportation of logs and timber products to public streams, lakes, mills, railroads, or highways for such time as the court or judge may determine; provided, the grounds of state institutions be excepted;

(14) underground reservoirs suitable for storage of natural gas;

(15) to mine and extract ores, metals, or minerals owned by the plaintiff located beneath or upon the surface of property where the title to said surface vests in others. However, the use of the surface for strip mining or open pit mining of coal (i.e., any mining method or process in which the strata or overburden is removed or displaced in order to extract the coal) is not a public use, and eminent domain may not be exercised for this purpose;

(16) to restore and reclaim lands strip- or underground-mined for coal and not reclaimed in accordance with Title 82, chapter 4, part 2, and to abate or control adverse affects of strip or underground mining on those lands.

History: En. Sec. 580, p. 189, L. 1877; re-en. Sec. 580, 1st Div. Rev. Stat. 1879; re-en. Sec. 598, 1st Div. Comp. Stat. 1887; amd. Sec. 2211, C. Civ. Proc. 1895; amd. Sec. 1, p. 135, L. 1899; amd. Sec. 1, Ch. 4, L. 1907; Sec. 7331, Rev. C. 1907; re-en. Sec. 9934, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1238; re-en. Sec. 9934, R.C.M. 1935; amd. Sec. 1, Ch. 245, L. 1953; amd. Sec. 6, Ch. 259, L. 1955; amd. Sec. 1, Ch. 216, L. 1961; amd. Sec. 1, Ch. 311, L. 1973; amd. Sec. 1, Ch. 375, L. 1974; R.C.M. 1947, 93-9902; amd. Sec. 18, Ch. 550, L. 1979.

70-30-103. What private property may be taken. (1) The private property which may be taken under this chapter includes:

(a) all real property belonging to any person;

(b) lands belonging to this state or to any county, city, or town not appropriated to some public use;

(c) property appropriated to public use, but such property must not be taken unless for a more necessary public use than that to which it has already been appropriated;

(d) franchises for roads, bridges, and ferries and all other franchises; but such franchises must not be taken unless for free highways, free bridges, railroads, or other more necessary public use;

(e) all rights-of-way for any and all the purposes mentioned in 70-30-102 and any and all structures and improvements thereon, and the lands held and used in connection therewith must be subject to be connected with, crossed, or intersected by any other right-of-way of improvements or structures thereon. They must also be subject to a limited use in common with the owner thereof when necessary; but such uses, crossings, intersections, and connections must be made in manner most compatible with the greatest public benefit and least private injury.

(2) All classes of private property not enumerated may be taken for public use when such taking is authorized by law.

History: En. Sec. 582, p. 190, L. 1877; re-en. Sec. 582, 1st Div. Rev. Stat. 1879; re-en. Sec. 600, 1st Div. Comp. Stat. 1887; amd. Sec. 2213, C. Civ. Proc. 1895; re-en. Sec. 7333, Rev. C. 1907; re-en. Sec. 9936, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1240; re-en. Sec. 9936, R.C.M. 1935; R.C.M. 1947, 93-9904.

70-30-104. What estates and rights in land may be taken. The following is a classification of the estates and rights in lands subject to be taken for the public use:

(1) such estate or rights as may be necessary up to and including a fee simple when taken for public buildings or grounds or for permanent buildings or for an outlet for a flow or a place for the deposit of debris or tailings of a mine or for the mining and extracting of ores, metals, or minerals when the same are owned by the plaintiff but located beneath or upon the surface of property where the title to said surface vests in others or for the underground storage of natural gas by a natural gas public utility as defined in 82-10-301. When the appropriation is for the underground storage of natural gas, all of the right, title, interest, and estate in the real property and in the subsand stratum, formation, or reservoir so appropriated shall be determinable and for all purposes terminate upon abandonment or upon cessation for the period of 1 year of the use for which the same was appropriated, and thereupon the ownership of the residue of natural gas therein remaining shall likewise vest in the then owners of such reservoir space.

(2) such estate or rights in the surface as are necessary for a reservoir or dam and for the permanent flooding that results, up to the edge of the maximum pool of the reservoir;

(3) an easement when taken for any other use;

(4) the right of entry upon and occupation of land and the right to take therefrom such earth, gravel, stones, trees, and timber as may be necessary for some public use.

History: En. Sec. 581, p. 190, L. 1877; re-en. Sec. 581, 1st Div. Rev. Stat. 1879; re-en. Sec. 599, 1st Div. Comp. Stat. 1887; re-en. Sec. 2212, C. Civ. Proc. 1895; re-en. Sec. 7332, Rev. C. 1907; re-en. Sec. 9935, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1239; re-en. Sec. 9935, R.C.M. 1935; amd. Sec. 1, Ch. 158, L. 1943; amd. Sec. 2, Ch. 245, L. 1953; amd. Sec. 7, Ch. 259, L. 1955; amd. Sec. 2, Ch. 216, L. 1961; R.C.M. 1947, 93-9903; amd. Sec. 1, Ch. 97, L. 1979.

70-30-105. Appropriation of underground gas reservoir — effect on owner's right to drill. (1) The appropriation of any sand, stratum, or formation for use as an underground natural gas storage reservoir shall be without prejudice to the rights of the owner or owners of said lands or of the oil, gas, or other mineral rights therein to drill or bore through the sand, stratum, or formation so appropriated for use as an underground natural gas storage reservoir in order to explore for, produce, process, treat, or market any oil, gas, or other minerals that might be contained in said lands above or below the sand, stratum, or formation so appropriated.

(2) Any additional cost or expense required to be incurred in order to protect the underground gas storage reservoir against pollution and the escape of the gas therefrom by reason of such boring or drilling through of the sand, stratum, or formation used as such underground gas storage reservoir shall be paid by the persons, firm, or corporation then owning such underground gas storage reservoir.

History: En. Sec. 5, Ch. 245, L. 1953; R.C.M. 1947, 93-9903.1.

70-30-106. Eminent domain not to be used for coal mining in certain cases — policy. For the following reasons the state's power of eminent domain may not be exercised to mine and extract coal owned by the plaintiff located beneath the surface of property where the title to the surface is vested in others:

(1) Because of the large reserves of and the renewed interest in coal in eastern Montana, coal development is potentially more destructive to land and watercourses and underground aquifers and potentially more extensive geographically than the forseeable development of other ores, metals, or minerals and affects large areas of land and large numbers of people.

(2) In many areas of Montana set forth in (1) hereinabove, the title to the surface is vested in an owner other than the mineral owner, and the surface owner is putting that surface to a productive use, and it is the public policy of the state to encourage and foster such productive use by such owner, and to permit the mineral owner to condemn the surface owner is to deprive the surface owner of the right to use his property in a productive manner as he determines and is also contrary to public policy as set forth in subsection (4).

(3) The magnitude of the potential coal development in eastern Montana will subject landowners to undue harassment by excessive use of eminent domain.

(4) It is the public policy of the state to encourage and foster diversity of land ownership, and the surface mining of coal and control of large areas of land by the surface coal mining industry would not foster public policy and further the public interest.

History: En. 93-9902.1 by Sec. 2, Ch. 311, L. 1973; R.C.M. 1947, 93-9902.1.

70-30-107. Private roads. Private roads may be opened in the manner prescribed by this chapter, but in every case the necessity of the road and the amount of all damage to be sustained by the opening thereof shall be first determined by a jury, and such amount, together with the expenses of the proceeding, shall be paid by the person to be benefited.

History: En. Sec. 2232, C. Civ. Proc. 1895; re-en. Sec. 7352, Rev. C. 1907; re-en. Sec. 9955, R.C.M. 1921; re-en. Sec. 9955, R.C.M. 1935; R.C.M. 1947, 93-9923.

70-30-108. No abrogation of provisions relating to city or county roads. Nothing in this code must be construed to abrogate or repeal any statute providing for the taking of property in any city, town, or county for road or street purposes.

History: En. Sec. 2233, C. Civ. Proc. 1895; re-en. Sec. 7353, Rev. C. 1907; re-en. Sec. 9956, R.C.M. 1921; re-en. Sec. 9956, R.C.M. 1935; R.C.M. 1947, 93-9924.

70-30-109. Temporary logging roads and banking grounds. (1) In the event that temporary roads for logging purposes or grounds for banking purposes are opened or taken, the same shall include only the temporary right to use the same, and the order of condemnation for said road shall fix the length of time and the date from which such road shall be opened or land shall be used, and at the expiration of said period so fixed, the right to use said road or land shall cease, and the use of said land shall revert to the party from whom the same is taken or to his legal successor in interest; provided, that no lands or grounds shall be taken for such temporary logging roads or banking grounds for a period of time longer than 5 years, and when taken for a period of time exceeding 1 year, the amount of damage for such year shall be fixed separately, and the amount fixed for each particular year must be paid on or before January 1 of each year; and in the event that the amount so fixed for any one year is not paid as herein specified, then and in that event the use of such lands shall revert to the party from whom the same is taken or to his successor in interest.

(2) In any suit for the opening of any temporary logging road or for the use of any ground or land for banking purposes, the court shall not finally order the opening of such road or the right to use such land or ground until the amount assessed as damages has been paid into court for the benefit of the party or parties owning or holding such land.

(3) In the event that any such land is occupied by a lessee, such lessee shall be made a party to the suit, and the final decree of the court shall apportion the amount of compensation received between the lessee and the owner of such lands, such decree being subject to the right of appeal of any party in interest.

History: En. Sec. 1, Ch. 89, L. 1907; re-en. Secs. 7354, 7355, Rev. C. 1907; re-en. Secs. 9957, 9958, R.C.M. 1921; re-en. Secs. 9957, 9958, R.C.M. 1935; R.C.M. 1947, 93-9925, 93-9926.

70-30-110. Survey and location of property to be taken — greatest public good — least private injury. In all cases where land is required for public use, the state or its agents in charge of such use may survey and locate the same, but it must be located in the manner which will be most compatible with the greatest public good and the least private injury and subject to the provisions of 70-30-206. The state or its agents in charge of such public use may enter upon the land and make examination, surveys, and maps thereof, and such entry shall constitute no cause of action in favor of the owners of the land except from injuries resulting from negligence, wantonness, or malice.

History: En. Sec. 584, p. 191, L. 1877; re-en. Sec. 584, 1st Div. Rev. Stat. 1879; re-en. Sec. 602, 1st Div. Comp. Stat. 1887; re-en. Sec. 2215, C. Civ. Proc. 1895; re-en. Sec. 7335, Rev. C. 1907; re-en. Sec. 9938, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1242; re-en. Sec. 9938, R.C.M. 1935; R.C.M. 1947, 93-9906.

70-30-111. Facts necessary to be found before condemnation. Before property can be taken, it must appear:

(1) that the use to which it is to be applied is a use authorized by law;

(2) that the taking is necessary to such use;

(3) if already appropriated to some public use, that the public use to which it is to be applied is a more necessary public use.

History: En. Sec. 583, p. 191, L. 1877; re-en. Sec. 583, 1st Div. Rev. Stat. 1879; re-en. Sec. 601, 1st Div. Comp. Stat. 1887; amd. Sec. 2214, C. Civ. Proc. 1895; re-en. Sec. 7334, Rev. C. 1907; re-en.

Sec. 9937, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1241; re-en. Sec. 9937, R.C.M. 1935; amd. Sup. Ct. Ord. 11020, eff. January 1, 1966; R.C.M. 1947, 93-9905(part).

Part 2

Preliminary Procedure

70-30-201. Applicable rules of practice. Except as otherwise provided in this chapter, the provisions of Title 25 are applicable to and constitute the rules of practice in the proceedings mentioned in this chapter.

History: En. Sec. 2231, C. Civ. Proc. 1895; re-en. Sec. 7351, Rev. C. 1907; re-en. Sec. 9954, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1256; re-en. Sec. 9954, R.C.M. 1935; R.C.M. 1947, 93-9922; amd. Sec. 26, Ch. 115, L. 1979.

70-30-202. Jurisdiction and venue — complaint and summons required. All proceedings under this chapter must be brought in the district court of the county in which the property or some part thereof is situated. They must be commenced by filing a complaint and issuing a summons thereon.

History: En. Sec. 585, p. 191, L. 1877; re-en. Sec. 585, 1st Div. Rev. Stat. 1879; re-en. Sec. 603, 1st Div. Comp. Stat. 1887; re-en. Sec. 2216, C. Civ. Proc. 1895; re-en. Sec. 7336, Rev. C. 1907; re-en. Sec. 9939, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1243; re-en. Sec. 9939, R.C.M. 1935; amd. Sec. 1, Ch. 22, L. 1937; R.C.M. 1947, 93-9907.

70-30-203. Contents of complaint. The complaint must contain:

(1) the name of the corporation, association, commission, or person in charge of the public use for which the property is sought, who must be styled plaintiff;

(2) the names of all owners, mortgagees, and lienholders of record and any other claimants of the property of record, if known, or a statement that they are unknown, who must be styled defendants;

(3) a statement of the right of plaintiff;

(4) if a right-of-way is sought, the complaint must show the location, general route, and termini and must be accompanied with a map thereof, so far as the same is involved in the action or proceeding;

(5) a description of each piece of land sought to be taken and whether the same includes the whole or only a part of the entire parcel or tract. All parcels lying in the county and required for the same public use may be included in the same or separate proceedings, at the option of the plaintiff, but the court may consolidate or separate them to suit the convenience of the parties. When application for the condemnation of a right-of-way for the purposes of sewerage is made on behalf of a settlement or a town or a county, the county commissioners of the county may be named as plaintiff.

(6) if a sand, stratum, or formation suitable for use as an underground natural gas storage reservoir is sought to be appropriated, a description thereof and of the land in which it is alleged to be contained and a description of all other property and rights sought to be appropriated for use in connection with the appropriation of the right to store natural gas in and withdraw natural gas from such reservoir. In addition, the complaint shall state facts showing that the underground reservoir is one subject to appropriation by plaintiff; also stating that the underground storage of natural gas in

the land sought to be appropriated is in the public interest; that the underground reservoir is suitable and practicable for natural gas storage; that the plaintiff in good faith has been unable to acquire the rights sought to be appropriated hereunder and a statement that the rights and property sought to be appropriated are not prohibited by law; and in addition, the complaint must be accompanied by a certificate from the board of oil and gas conservation as set forth in 82-10-304.

History: En. Sec. 586, p. 192, L. 1877; re-en. Sec. 586, 1st Div. Rev. Stat. 1879; re-en. Sec. 604, 1st Div. Comp. Stat. 1887; amd. Sec. 2217, C. Civ. Proc. 1895; re-en. Sec. 7337, Rev. C. 1907; re-en. Sec. 9940, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1244; re-en. Sec. 9940, R.C.M. 1935; amd. Sec. 3, Ch. 245, L. 1953; amd. Sec. 8, Ch. 259, L. 1955; amd. Sec. 1, Ch. 197, L. 1973; amd. Sec. 206, Ch. 253, L. 1974; R.C.M. 1947, 93-9908.

70-30-204. Summons — contents — how served. (1) The clerk must issue a summons which must contain:

(a) the names of the parties;

(b) a description of the lands and other property proposed to be taken;

(c) a statement of the public use for which it is sought; and

(d) a notice to the defendants to file and serve upon the plaintiff an answer within 15 days from date of service of summons and to appear before the court or judge, at a time and place therein specified, and show cause why the property described should not be condemned as prayed for in the complaint.

(2) Such summons must, in other particulars, be in form of a summons in a civil action and must be served in like manner upon each defendant named therein at least 20 days previous to the time designated in such notice for the hearing. A copy of the complaint must be served with the summons upon each defendant named. But the failure to make such service upon a defendant does not affect the right to proceed against any or all other of the defendants upon whom service of summons had been made.

History: En. Sec. 587, p. 192, L. 1877; re-en. Sec. 587, 1st Div. Rev. Stat. 1879; re-en. Sec. 605, 1st Div. Comp. Stat. 1887; amd. Sec. 2218, C. Civ. Proc. 1895; re-en. Sec. 7338, Rev. C. 1907; re-en. Sec. 9941, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1245; re-en. Sec. 9941, R.C.M. 1935; amd. Sec. 9, Ch. 259, L. 1955; amd. Sec. 1, Ch. 234, L. 1961; R.C.M. 1947, 93-9909.

70-30-205. Who may defend — answer. (1) All persons named in the complaint, in occupation of or claiming an interest in any of the property described in the complaint or in the amount to be awarded for the taking thereof, though not named, may appear.

(2) The answer of each appearing defendant must be filed and served upon the plaintiff or upon any attorney for plaintiff within a period of 15 days after the service of summons and complaint. The answer of each appearing defendant must contain a specific allegation as to the total amount which such defendant claims is reasonable and just for the taking of such defendant's lands or other real property or interest therein.

History: En. Sec. 588, p. 192, L. 1877; re-en. Sec. 588, 1st Div. Rev. Stat. 1879; re-en. Sec. 606, 1st Div. Comp. Stat. 1887; amd. Sec. 2219, C. Civ. Proc. 1895; re-en. Sec. 7339, Rev. C. 1907; re-en. Sec. 9942, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1246; re-en. Sec. 9942, R.C.M. 1935; amd. Sec. 2, Ch. 234, L. 1961; R.C.M. 1947, 93-9910.

70-30-206. Powers of court — preliminary condemnation order. (1) The court or judge has power to:

(a) regulate and determine the place and manner of making the connections and crossings and enjoying the common uses mentioned in 70-30-103(1)(e) and of the occupying of canyons, passes, and defiles for railroad purposes, as permitted and regulated by the laws of this state or of the United States;

(b) determine whether or not the use for which the property is sought to be appropriated is a public use within the meaning of the laws of this state;

(c) limit the amount of property sought to be appropriated if in the opinion of the court or judge the quantity sought to be appropriated is not necessary.

(2) If the court or judge is satisfied from the evidence presented at the hearing provided for in 70-30-204 that the public interests require the taking of such lands and that the facts necessary to be found before condemnation appear, it or he must forthwith make and enter a preliminary condemnation order that the condemnation of the land or other real property may proceed in accordance with the provisions of this chapter.

(3) If the property sought to be appropriated is a sand, stratum, or formation suitable for use as an underground natural gas storage reservoir and the existence and suitability of it for such use has been proved by plaintiff upon substantial evidence, the order of the court or judge shall direct the commissioners to ascertain and determine the amount to be paid by the plaintiff to each person for his interest in the property sought to be appropriated for use as such underground natural gas storage reservoir and/or as the annual rental for the use of such underground gas storage reservoir and for the use of so much of the surface as is required in the operation of the underground gas storage reservoir and for the use in connection with the creation, operation, and maintenance thereof and for all the native gas contained in said reservoir as compensation and damages by reason of the appropriation of such property. However, the amount to be paid for such native gas and all thereof shall be no less than the market value of such gas. The court shall appoint three persons, qualified as experts and recommended as such by the board of oil and gas conservation, to assist and advise the commissioners in determining the compensation and damages to be paid by plaintiff to each person for his interest in the property sought to be appropriated, and the fees and expenses of such persons shall be chargeable as costs of the proceedings to be paid by the plaintiff.

History: En. Sec. 589, p. 193, L. 1877; re-en. Sec. 589, 1st Div. Rev. Stat. 1879; re-en. Sec. 607, 1st Div. Comp. Stat. 1887; amd. Sec. 2220, C. Civ. Proc. 1895; re-en. Sec. 7340, Rev. C. 1907; re-en. Sec. 9943, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1247; re-en. Sec. 9943, R.C.M. 1935; amd. Sec. 4, Ch. 245, L. 1953; amd. Sec. 10, Ch. 259, L. 1955; amd. Sec. 3, Ch. 234, L. 1961; amd. Sec. 207, Ch. 253, L. 1974; R.C.M. 1947, 93-9911.

70-30-207. Appointment of commissioners — qualifications — affidavit. (1) Immediately upon making and entering the preliminary condemnation order, the judge must meet with the respective parties or their attorneys of record for the purpose of appointing condemnation commissioners to ascertain and determine the amount to be paid by the plaintiff to each owner or other persons interested in such property by reason of the appropriation of such property. The appointment of condemnation commissioners and the commission hearing may be waived by written consent of both parties, in which case the proceeding shall be conducted in the district court as if the case had been appealed from an award by such commissioners.

(2) The court must thereupon appoint three qualified, disinterested condemnation commissioners, unless appointment has been waived. One of such commissioners shall be nominated by the party or parties plaintiff. One of such commissioners shall be nominated by the party or parties defendant. The third commissioner shall be the chairman and shall be nominated by the two commissioners previously nominated. However, if said two commissioners fail to make such choice at the time of their appointment, then such nomination shall be made by the presiding judge.

(3) Each commissioner shall possess the following qualifications:

(a) a citizen of the United States and over 18 years of age;

(b) that he is not more than 70 years of age;

(c) that he is in possession of natural faculties, of ordinary intelligence, and not decrepit;

(d) that he is possessed of sufficient knowledge of the English language;

(e) that he was assessed on the last assessment roll of a county within the judicial district in which the action is pending;

(f) that he has not been convicted of malfeasance in office or any felony or other high crime;

(g) that he is not related within the sixth degree to any party;

(h) that he does not stand in the relation of guardian and ward, master and servant, debtor and creditor, or principal and agent or partner or surety as to any party.

(4) At the time of such meeting and nominations, there shall be filed with the court by each nominating party or judge an affidavit of the person so nominated stating substantially as follows:

(a) that he has formed no unqualified opinion or belief as to the compensation to be awarded in the proceeding or as to the fairness or unfairness of the plaintiff's offer for the lands and improvements of the defendants;

(b) that he has no enmity against or bias in favor of any party and has not discussed, communicated, or overheard or read any discussion or communication from any party relating to values of the lands in question or the compensation offered, demanded, or to be awarded;

(c) that if selected as a condemnation commissioner, he is willing to serve and will well and truly try the issues of compensation and render a true decision according to the evidence and in compliance with the instructions of the court;

(d) that he will not discuss the case with anyone except the other commissioners until a decision has been filed with the court.

History: En. Sec. 608, 1st Div. Comp. Stat. 1887; amd. Sec. 1, p. 269, L. 1891; amd. Sec. 2221, C. Civ. Proc. 1895; re-en. Sec. 7341, Rev. C. 1907; re-en. Sec. 9944, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1248; re-en. Sec. 9944, R.C.M. 1935; amd. Sec. 4, Ch. 234, L. 1961; amd. Sec. 19, Ch. 423, L. 1971; R.C.M. 1947, 93-9912(part); amd. Sec. 1, Ch. 8, L. 1979.

Part 3

Hearing, Judgment, and Subsequent Proceedings

70-30-301. Hearing — judge to preside — determinations by commissioners. (1) Immediately upon nomination and appointment of commissioners under 70-30-207, the same shall proceed to meet at the time and place stated in the order appointing them, which time shall not be more than 10 days after the order of appointing, and proceed to examine the lands sought to be appropriated. At a time appointed by the judge and within said 10-day period they shall hear the allegations and evidence of all persons interested in each of the several parcels of land.

(2) Such hearing shall be attended by and presided over by the presiding judge who shall make all necessary rulings upon procedure and the admissibility of evidence.

(3) At the conclusion of the aforesaid hearing, the court or judge shall instruct the commissioners as to the law applicable to their deliberations and shall instruct them that their duty is to determine, solely upon the basis of said examination of lands, the evidence produced at the hearing or hearings, and the instructions of the court, the following:

(a) the current fair market value of the property sought to be appropriated and all improvements thereon pertaining to the realty and of each and every separate estate and interest therein. If it consists of different parcels, the current fair market value of each parcel and each estate or interest therein must be separately assessed.

(b) if the property sought to be appropriated constitutes only a part of a larger parcel, the depreciation in current fair market value which will accrue to the portion not sought to be condemned by reason of its severance from the portion sought to be condemned and the construction of the improvements in the manner proposed by the plaintiff;

(c) separately, how much the portion not sought to be condemned and each estate or interest therein will be benefited, if at all, by the construction of the improvements proposed by the plaintiff; and if the benefit shall be equal to the amount assessed under subsection (3)(b), the owner of the parcel shall be allowed no compensation except the value of the portion taken; but if the benefits shall be less than the amount assessed under subsection (3)(b), the former shall be deducted from the latter, and the remainder shall be the only amount allowed in addition to the current fair market value;

(d) if the property sought to be condemned be for a railroad, the cost of good and sufficient fences along the line of such railroad and the cost of cattle guards where fences may cross the line of such railroad.

(4) Where there are two or more estates or divided interests in property sought to be condemned, the plaintiff is entitled to have the amount of the award for said property first determined, as hereinbefore stated, as between plaintiff and all defendants claiming any interests therein. Thereafter in the same proceeding the respective rights of each of such defendants in and to the award shall be determined by the commissioners, under supervision and instruction of the court, and the award apportioned accordingly.

History: **En. Sec. 608, 1st Div. Comp. Stat. 1887; amd. Sec. 1, p. 269, L. 1891; amd. Sec. 2221, C. Civ. Proc. 1895; re-en. Sec. 7341, Rev. C. 1907; re-en. Sec. 9944, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1248; re-en. Sec. 9944, R.C.M. 1935; amd. Sec. 4, Ch. 234, L. 1961; amd. Sec. 19, Ch. 423, L. 1971; R.C.M. 1947, 93-9912(part); amd. Sec. 1, Ch. 531, L. 1981.**

Compiler's Comments

1981 Amendment: Inserted "current fair market" before "value" throughout the section.

70-30-302. Assessing compensation — date and measure — interest. (1) For the purpose of assessing compensation, the right thereto shall be deemed to have accrued at the date of the service of the summons, and its current fair market value as of that date shall be the measure of compensation for all property to be actually taken and the basis of depreciation in the current fair market value of property not actually taken but injuriously affected. This shall not be construed to limit the amount of compensation payable by the department of highways under the provisions of any legislation enacted pursuant to the federal Highway Beautification Act of 1965.

(2) If an order be made letting the plaintiff into possession, as provided in 70-30-311, the full amount finally awarded shall draw interest at the rate of 10% per annum from the date of the service of the summons to the earlier of the following dates:

(a) the date on which the right to appeal to the Montana supreme court expires or, if appeal is filed, to the date of final decision by the supreme court; or

(b) the date on which the property owner withdraws from court the full amount finally awarded.

(3) If the property owner withdraws from court a fraction of the amount finally awarded, interest on such fraction shall cease on the date it is withdrawn but interest on the remainder of the amount finally awarded shall continue to the earlier of the aforesaid dates defined in (2)(a) and (2)(b) of this section until the full amount is withdrawn from the court.

(4) None of the amount finally awarded shall draw interest after the date on which the right to appeal to the Montana supreme court expires.

(5) No improvements put upon the property subsequent to the date of the service of summons shall be included in the assessment of compensation or depreciation in current fair market value, nor shall the same be used as the basis of computing such compensation or depreciation.

History: En. Sec. 591, p. 194, L. 1877; re-en. Sec. 591, 1st Div. Rev. Stat. 1879; re-en. Sec. 609, 1st Div. Comp. Stat. 1887; amd. Sec. 2222, C. Civ. Proc. 1895; re-en. Sec. 7342, Rev. C. 1907; re-en. Sec. 9945, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1249; re-en. Sec. 9945, R.C.M. 1935; amd. Sec. 1, Ch. 133, L. 1957; amd. Sec. 5, Ch. 234, L. 1961; amd. Sec. 1, Ch. 182, L. 1965; amd. Sec. 1, Ch. 187, L. 1867; amd. Sec. 12, Ch. 212, L. 1969; amd. Sec. 208, Ch. 316, L. 1974; amd. Sec. 1, Ch. 534, L. 1975; R.C.M. 1947, 93-9913; amd. Sec. 1, Ch. 257, L. 1981; amd. Sec. 2, Ch. 531, L. 1981.

Compiler's Comments

1981 Amendments: Chapter 257 substituted "date of the service of the summons" for "date on which the property owner surrenders possession of the property in accordance with the terms of such order" in (2).

Chapter 531 substituted "current fair market value" for "actual value" in the first sentence of (1) and inserted "current fair market" before "value" where it appears throughout the rest of the section.

Applicability: Section 2, Ch. 257, L. 1981, provided: "This act applies to all summons[es] served after the effective date of this act." Effective October 1, 1981.

70-30-303. Final report and award of commissioners — procedure on failure to agree. (1) The report of commissioners shall be made on such forms as are provided for their use by authority of the court. The report must be filed within 10 days after the completion of the hearing or within such additional time as allowed by the judge upon a clear showing of necessity and must be filed with the clerk of court. The clerk shall notify the parties interested that the report has been filed, which notice, together with a true copy of the report, must be served upon all the parties interested in the same manner as a summons.

(2) A concurrence of two commissioners is necessary to the making of a final report or award as to any parcel of property or interest therein. If no two of the commissioners are able to agree as to the amount of any award, they shall report the fact to the judge or court within the time herein specified and the court shall forthwith impanel and appoint new commissioners as herein provided, which commissioners shall proceed as provided herein to determine any award upon which the previous commissioners failed to agree.

(3) The report of the commissioners shall also state the number of days or portions thereof consumed by the commissioners in performance of their duties as prescribed herein.

History: En. Sec. 2223, C. Civ. Proc. 1895; re-en. Sec. 7343, Rev. C. 1907; re-en. Sec. 9946, R.C.M. 1921; re-en. Sec. 9946, R.C.M. 1935; amd. Sec. 6, Ch. 234, L. 1961; R.C.M. 1947, 93-9914; amd. Sec. 27, Ch. 115, L. 1979.

70-30-304. Appeal to district court from assessment of commissioners. (1) An appeal from any assessment made by the commissioners may be taken and prosecuted in the court where the report of said commissioners is filed by any party interested. Such appeal must be taken within the period of 30 days after the service upon appellant of the notice of the filing of the award by the service of notice of such appeal upon the opposing party or his attorney in such proceedings and the filing of the same in the district court wherein the action is pending, and the same shall be brought on for trial upon the same notice and in the same manner as other civil actions, and unless a jury shall be waived by the consent of all parties to such appeal, the same shall be tried by jury, and the amount to which appellant may be entitled, by reason of the appropriation of his property, shall be reassessed upon the same principle as hereinbefore prescribed for the assessment of such amount by commissioners.

(2) Upon any verdict or assessment by commissioners becoming final, judgment shall be entered declaring that upon payment of such verdict or assessment, together with the interests and costs allowed by law, if any, the right to construct and maintain the highway, railroad, or other public work or improvement and to take, use, and appropriate the property described in such verdict or assessment for the use and purposes for which said land has been condemned shall, as against the parties interested in such verdict or assessment, be and remain in the plaintiff and his or its heirs, successors, or assigns forever.

(3) In case the party appealing from the award of the commissioners in any proceeding, as aforesaid, shall not succeed in changing to his advantage the amount finally awarded in such proceeding, he shall not recover the costs of such appeal, but all the costs of the appellee upon such appeal shall be taxed against and recovered from the appellant; provided, that upon the trial of such appeal, the plaintiff may contest the right of any party or parties thereto to any of the property mentioned and set forth or involved in said appeal, which was located after the preliminary survey of any such highway or railroad, seeking to condemn its right-of-way under and pursuant to the provisions of this chapter, provided such condemnation proceedings are begun within 1 year after such preliminary survey.

History: En. Sec. 608, p. 220, L. 1887; re-en. Sec. 2224, C. Civ. Proc. 1895; re-en. Sec. 7344, Rev. C. 1907; re-en. Sec. 9947, R.C.M. 1921; amd. Sec. 1, Ch. 145, L. 1927; re-en. Sec. 9947, R.C.M. 1935; amd. Sec. 7, Ch. 234, L. 1961; R.C.M. 1947, 93-9915.

70-30-305. Condemnor to make offer upon appeal — award of expenses of litigation. (1) The condemnor shall, within 30 days after an appeal is perfected from the commissioner's award or report or not more than 60 days after waiver of appointment of condemnation commissioners, submit to condemnee a written final offer of judgment for the property to be condemned, together with necessary expenses of condemnee then accrued. If at any time prior to 10 days before trial the condemnee serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance, together with proof of service thereof, and thereupon judgment shall be entered. An offer not accepted shall be deemed withdrawn and evidence thereof is not admissible at the trial except in a proceeding to determine costs. The fact that an offer is made but not accepted does not preclude a subsequent offer.

(2) In the event of litigation and when the private property owner prevails by receiving an award in excess of the final offer of the condemnor, the court shall award necessary expenses of litigation to the condemnee.

History: En. 93-9921.1 by Sec. 1, Ch. 453, L. 1973; R.C.M. 1947, 93-9921.1; amd. Sec. 2, Ch. 8, L. 1979.

70-30-306. Necessary expenses of litigation defined. (1) Necessary expenses of litigation as authorized by 70-30-305 mean reasonable and necessary attorney fees, expert witness fees, exhibit costs, and court costs.

(2) Reasonable and necessary attorney fees are the customary hourly rates for an attorney's services in the county in which trial is held. Reasonable and necessary attorney fees shall be computed on an hourly basis and may not be computed on the basis of any contingent fee contract entered into after July 1, 1977.

(3) Reasonable and necessary expert witness fees may not exceed the customary rate for the services of a witness of such expertise in the county in which trial is held.

History: En. 93-9921.2 by Sec. 1, Ch. 48, L. 1977; R.C.M. 1947, 93-9921.2.

70-30-307. When payment of compensation to be made — deposit of bond. The plaintiff must within 30 days after final judgment pay the sum of money assessed but may at the time of or before the payment elect to build the fences and cattle guards and, if he so elect, shall execute to the defendant a bond with sureties to be approved by the court, in double the assessed cost of the same, to build such fences and cattle guards within 8 months from the time the railroad is built on the land taken and, if such bond be given, need not pay the cost of such fences and cattle guards. In an action on such bond, the plaintiff may recover reasonable attorney's fees.

History: En. Sec. 593, p. 194, L. 1877; re-en. Sec. 593, 1st Div. Rev. Stat. 1879; re-en. Sec. 611, 1st Div. Comp. Stat. 1887; amd. Sec. 2226, C. Civ. Proc. 1895; re-en. Sec. 7346, Rev. C. 1907; re-en. Sec. 9949, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1251; re-en. Sec. 9949, R.C.M. 1935; R.C.M. 1947, 93-9917.

70-30-308. How payment made — execution or annulment for nonpayment. (1) Payment may be made to the defendants entitled thereto, or the money may be deposited in court for the defendants and be distributed to those entitled thereto. However, at the option of the defendants, payments may be made:

(a) if a fee simple interest in the defendant's land is taken, on an annual basis, utilizing the installment contract method;

(b) if other land is reasonably available and the plaintiff consents, by means of a land exchange between the defendants and plaintiffs if the land to be provided by the plaintiffs in the exchange is of equal or more value than the land being condemned; or

(c) if an easement over or through the defendants' property is involved, in either a single payment or in not more than five consecutive annual installments.

(2) If the money be not so paid or deposited, the defendants may have execution as in civil cases, and if the money cannot be made on execution, the court or judge, upon a showing to that effect, must set aside and annul the entire proceedings and restore possession of the property to the defendant if possession has been taken by the plaintiff.

History: En. Sec. 594, p. 194, L. 1877; re-en. Sec. 594, 1st Div. Rev. Stat. 1879; re-en. Sec. 612, 1st Div. Comp. Stat. 1887; re-en. Sec. 2227, C. Civ. Proc. 1895; re-en. Sec. 7347, Rev. C. 1907; re-en. Sec. 9950, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1252; re-en. Sec. 9950, R.C.M. 1935; R.C.M. 1947, 93-9918; amd. Sec. 3, Ch. 531, L. 1981.

Compiler's Comments

1981 Amendment: Added the last sentence as an introductory clause in subsection (1); inserted subsections (1)(a), (1)(b) and (1)(c) providing optional forms of payment at the defendants' discretion.

70-30-309. Final order of condemnation — contents — vesting upon filing. (1) When payments have been made and the bond given, if the plaintiff elects to give one, as required by 70-30-307 and 70-30-308, the court or judge must make a final order of condemnation, which must describe the property condemned and the purposes of such condemnation.

(2) A copy of the order must be filed in the office of the county clerk and recorder, and thereupon the property described therein shall vest in the plaintiff for the purposes therein specified.

History: En. Sec. 595, p. 195, L. 1877; re-en. Sec. 595, 1st Div. Rev. Stat. 1879; re-en. Sec. 613, 1st Div. Comp. Stat. 1887; re-en. Sec. 2228, C. Civ. Proc. 1895; re-en. Sec. 7348, Rev. C. 1907; re-en. Sec. 9951, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1253; re-en. Sec. 9951, R.C.M. 1935; R.C.M. 1947, 93-9919.

70-30-310. New proceedings to cure defective title. If the title attempted to be acquired is found to be defective from any cause, the plaintiff may again institute proceedings to acquire the same, as in this chapter prescribed.

History: En. Sec. 592, p. 194, L. 1877; re-en. Sec. 592, 1st Div. Rev. Stat. 1879; re-en. Sec. 610, 1st Div. Comp. Stat. 1887; re-en. Sec. 2225, C. Civ. Proc. 1895; re-en. Sec. 7345, Rev. C. 1907; re-en. Sec. 9948, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1250; re-en. Sec. 9948, R.C.M. 1935; R.C.M. 1947, 93-9916.

70-30-311. Putting plaintiff in possession. (1) At any time after the filing of the preliminary condemnation order or after the report and assessment of the commissioners have been made and filed in the court and either before or after appeal from such assessment or from any other order or judgment in the proceedings, the court or any judge thereof at chambers upon application of the plaintiff shall have power to make an order that, upon payment into court for the defendant entitled thereto of the amount of compensation claimed by the defendant in his answer or the amount assessed either by the commissioners or by the jury, as the case may be, the plaintiff be authorized:

(a) if already in possession of the property of such defendant sought to be appropriated, to continue in such possession; or

(b) if not in possession, to take possession of such property and use and possess the same during the pendency and until the final conclusion of the proceedings and litigation and that all actions and proceedings against the plaintiff on account thereof be stayed until such time.

(2) However, where an appeal is taken by such defendant, the court or judge may, in its or his discretion, require the plaintiff before continuing or taking such possession, in addition to paying into court the amount assessed, to give bond or undertaking with sufficient sureties to be approved by the judge and to be in such sum as the court or judge may direct, conditioned to pay the defendant any additional damages and costs over and above the amount assessed, which it may finally be determined that defendant is entitled to for the appropriation of the property, and all damages which defendant may sustain if for any cause such property shall not be finally taken for public uses.

(3) The amount assessed by the commissioners or by the jury on appeal, as the case may be, shall be taken and considered, for the purposes of this section, until reassessed or changed in the further proceedings, as just compensation for the property appropriated; but the plaintiff, by payment into court of the amount claimed in the answer or the amount assessed or by giving security as above provided, shall not be thereby prevented or precluded from appealing from such assessment but may appeal in the same manner and with the same effect as if no money had been deposited or security given. In all cases where the plaintiff deposits the amount of the assessment and continues in possession or takes possession of the property, as herein provided, the defendant entitled thereto, if there be no dispute as to the ownership of the property, may at any time demand and receive upon order of the court all or any part of the money so deposited and shall not by such demand or receipt be barred or precluded from his right of appeal from such assessment but may, notwithstanding, take and prosecute his appeal from such assessment; provided that if the amount of such assessment is finally reduced on appeal by either party, such defendant who has received all or any part of the amount deposited shall be liable to the plaintiff for any excess of the amount so received by him over the amount finally assessed, with legal interest on such excess from the time such defendant received the money deposited, and the same may be recovered by action; and provided, further, that upon any appeal from assessment by the commissioners to a jury, the jury may find a less as well as an equal or greater amount than that assessed by the commissioners; and provided, further, that the court shall not order the delivery to any defendant of more than 75% of the money deposited on his account except upon posting of bond by such defendant equal to the amount in excess of 75%, with sureties to be approved by the court, to repay to the plaintiff such amounts withdrawn as are in excess of his final award in the proceedings.

History: En. Sec. 596, p. 195, L. 1877; re-en. Sec. 596, 1st Div. Rev. Stat. 1879; amd. Sec. 614, 1st Div. Comp. Stat. 1887; amd. Sec. 2, p. 272, L. 1891; en. Sec. 2229, C. Civ. Proc. 1895; re-en. Sec. 7349, Rev. C. 1907; re-en. Sec. 9952, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1254; re-en. Sec. 9952, R.C.M. 1935; amd. Sec. 8, Ch. 234, L. 1961; R.C.M. 1947, 93-9920.

70-30-312. Appeal to supreme court. (1) The plaintiff or defendant or any party interested in the proceedings can appeal to the supreme court from any finding or judgment made or rendered under this chapter, as in other cases.

(2) Such appeal does not stay any further proceedings under this chapter, except that the district court on motion or ex parte may grant a stay for such period of time and under such conditions as the court deems proper.

History: En. Sec. 583, p. 191, L. 1877; re-en. Sec. 583, 1st Div. Rev. Stat. 1879; re-en. Sec. 601, 1st Div. Comp. Stat. 1887; amd. Sec. 2214, C. Civ. Proc. 1895; re-en. Sec. 7334, Rev. C. 1907; re-en. Sec. 9937, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1241; re-en. Sec. 9937, R.C.M. 1935; amd. Sup. Ct. Ord. 11020, eff. January 1, 1966; R.C.M. 1947, 93-9905(part).

70-30-313. Current fair market value. Current fair market value is the price that would be agreed to by a willing and informed seller and buyer, taking into consideration, but not limited to, the following factors:

(1) the highest and best reasonably available use of the property and its value for such use;

(2) the machinery, equipment, and fixtures forming part of the real estate taken; and

(3) any other relevant factors as to which evidence is offered.

History: En. Sec. 4, Ch. 531, L. 1981.

Compiler's Comments

Codification Instruction: Section 7, Ch. 531, L. 1981, provided: "Sections 4, 5, and 6 [70-30-313 through 70-30-315] are intended to be codified as an integral part of Title 70, chapter 30, part 3, and the provisions of Title 70, chapter 30, apply to sections 4, 5, and 6, and sections 4, 5, and 6 apply to Title 70, chapter 30."

70-30-314. Weed control responsibility. The plaintiff, upon taking possession of the land, is responsible for the control and destruction of noxious weeds on such land until natural grasses have taken over the property and noxious weeds have ceased to exist.

History: En. Sec. 5, Ch. 531, L. 1981.

70-30-315. Proration of taxes. The plaintiff shall be assessed his pro rata share of taxes for the land being condemned as of the date of possession or summons, whichever occurs first. The plaintiff shall be assessed for all taxes accruing after the date of possession or summons, whichever occurs first.

History: En. Sec. 6, Ch. 531, L. 1981.

70-30-316 through 70-30-320 reserved.

70-30-321. Sale of property acquired for public use when use abandoned — procedure. (1) Whenever a person who has acquired a real property interest for a public use, whether by right of eminent domain or otherwise, abandons such public use and places such interest for sale, the seller may sell the interest to the highest bidder at public auction.

(2) In the event the seller decides to sell an interest in real property as set forth in subsection (1), he shall publish notice of the public sale in a newspaper published in the county in which the real property interest is located once a week for 4 successive weeks. Sale shall be held in the county

where the real property interest is located. The notice of sale shall contain the information required by 77-2-322.

History: En. Sec. 1, Ch. 440, L. 1981.

Compiler's Comments

Codification Instruction: Section 3, Ch. 440, L. 1981, provided: "Sections 1 and 2 are intended to be codified as an integral part of Title 70, chapter 30, and the provisions of Title 70, chapter 30, apply to sections 1 and 2."

70-30-322. Option of original owner or successor in interest to purchase at sale price. (1) The owner from whom the real property interest was originally acquired by eminent domain or otherwise or, if there is a successor in interest, the successor in interest shall have the option to purchase the interest by offering therefor an amount of money equal to the highest bid received for the interest at a sale provided for in 70-30-321. If more than one person claims an equal entitlement, the option may not be exercised.

(2) If no bids are received by the seller and the optionholder indicates in writing to the seller that he wishes to exercise the option, the seller shall have the real property interest appraised and sell the interest at that price to the optionholder.

History: En. Sec. 2, Ch. 440, L. 1981.

CHAPTER 31

RELOCATION ASSISTANCE
FAIR TREATMENT OF CONDEMNEES

Part 1 — General Provisions

Section

70-31-101. Purpose.
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70-31-103. Application to all federally assisted programs.
70-31-104. New rights and powers not created.
70-31-105. Duplication of eminent domain payments not intended.
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Part 2 — Relocation Payments, Assistance, and Advisory Services

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70-31-204. Relocation advisory services — contracted services.
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70-31-206. Relocation costs included in project costs — property contributed incident to federal program.
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Part 3 — Rights and Duties Relating to Condemnation

70-31-301. Appraisal, negotiation, and other condemnation policies mandated.
70-31-302. Reimbursement of closing costs and taxes incurred by owner.
70-31-303. Inverse condemnation — reimbursement of expenses of proceeding.

70-31-304. Reimbursement of costs when condemnation proceedings dismissed or abandoned.
70-31-305. Acquisition of buildings and improvements affected.

Part 1

General Provisions

70-31-101. Purpose. It is the purpose of this chapter to:

(1) provide for uniform and equitable treatment of persons displaced from their homes, businesses, or farms as a result of federally assisted programs;

(2) establish uniform and equitable land acquisition policies for federally assisted programs; and

(3) comply with the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

History: En. Sec. 1, Ch. 3, 2nd Ex. L. 1971; R.C.M. 1947, 93-9927.

70-31-102. Definitions. As used in this chapter, unless the context otherwise requires, the following definitions apply:

(1) "Agency" means the state of Montana, a political subdivision of the state, or any department, agency, or instrumentality of the state of Montana or of a political subdivision of the state.

(2) "Average annual net earnings" means one-half of any net earnings of a business or farm operation, before federal and state income taxes, during the 2 taxable years immediately preceding the taxable year in which such business or farm operation moves from real property acquired for a project of an agency (for which federal financial assistance is available to pay all or any part of the cost) or during such other period as the acquiring agency determines to be more equitable for establishing such earnings and includes any compensation paid by the business or farm operation to the owner, his spouse, or his dependents during such period.

(3) "Business" means any lawful activity, excepting a farm operation, conducted primarily:

(a) for the purchase, sale, lease, and rental of personal and real property and for the manufacture, processing, or marketing of products, commodities, or any other personal property;

(b) for the sale of services to the public;

(c) by a nonprofit organization; or

(d) solely for the purposes of 70-31-201(1), for assisting in the purchase, sale, resale, manufacture, processing, or marketing of products, commodities, personal property, or services by the erection and maintenance of an outdoor advertising display or displays, whether or not such display or displays are located on the premises on which any of the above activities are conducted.

(4) "Displaced person" means any person who on or after July 1, 1971, moves from real property or moves his personal property from real property as a result of the acquisition of such real property, in whole or in part, or as the result of the written order of an acquiring agency to vacate real property for a program or project undertaken by the agency for which federal

financial assistance will be available to pay all or any part of the cost; and solely for the purposes of 70-31-201(1) and (2) and 70-31-204, as a result of the acquisition of or as the result of the written order of the acquiring agency to vacate other real property, on which such person conducts a business or farm operation, for such program or project. The term "displaced person" also includes a person who moves or discontinues his business or moves other personal property or moves from his dwelling as the direct result of code enforcement activities or a program of rehabilitation of buildings conducted pursuant to a federal program.

(5) "Farm operation" means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

(6) "Federal act" means the "Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970" or as that act may be amended.

(7) "Federal financial assistance" means a grant, loan, or contribution provided by the United States, except any federal guarantee or insurance.

(8) "Person" means any individual, partnership, corporation, or association.

History: **En. Sec. 2, Ch. 3, 2nd Ex. L. 1971; R.C.M. 1947, 93-9928.**

70-31-103. Application to all federally assisted programs. This chapter shall apply to all acquisitions of real property by an agency for a program or project for which federal financial assistance is available to pay all or any part of the cost.

History: **En. Sec. 18, Ch. 3, 2nd Ex. L. 1971; R.C.M. 1947, 93-9944.**

70-31-104. New rights and powers not created. (1) Nothing in this chapter shall be construed as creating, in any condemnation proceedings brought under the power of eminent domain, any element of value or damage not in existence immediately prior to July 1, 1971.

(2) Nothing in this chapter shall be construed as, directly or indirectly, granting any new or additional power of eminent domain.

History: **En. Sec. 17, Ch. 3, 2nd Ex. L. 1971; R.C.M. 1947, 93-9943(2), (3).**

70-31-105. Duplication of eminent domain payments not intended. No payment or assistance provided for in this chapter shall be required to be made by an agency if the displaced person receives a payment required by the laws of eminent domain which is determined by the agency to have substantially the same purpose and effect as such payment under this chapter.

History: **En. Sec. 16, Ch. 3, 2nd Ex. L. 1971; R.C.M. 1947, 93-9942.**

70-31-106. Payments not income under tax laws or other assistance laws. No payment received by a displaced person under this chapter shall be considered as income or resources for the purpose of determining the eligibility of any person for assistance under any state law or for the purposes of determining income under state tax laws.

History: **En. Sec. 9, Ch. 3, 2nd Ex. L. 1971; R.C.M. 1947, 93-9935.**

Part 2

Relocation Payments, Assistance, and Advisory Services

70-31-201. Payments to displaced persons — moving expense — business losses. (1) Whenever the acquisition of real property for a program or project of an agency (for which federal financial assistance is available to pay all or any part of the cost) will result in the displacement of any person, the agency shall make payment to the displaced person, upon application as approved by the agency, for:

(a) actual reasonable expenses in moving himself, his family, business, farm operation, or other personal property;

(b) actual direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation but not to exceed an amount equal to the reasonable expenses that would have been required to relocate such property, as determined by the agency; and

(c) actual reasonable expenses in searching for a replacement business or farm.

(2) In lieu of payments for actual expenses and losses under subsection (1) of this section, a person who is displaced from a dwelling may elect to receive a moving expense allowance determined according to a schedule established by the agency and a dislocation allowance, neither of which may exceed the maximum allowances under section 202(b) of the federal act.

(3) In lieu of payments for actual expenses and losses under subsection (1), a person who is displaced from his place of business or from his farm operation may receive a fixed payment in an amount equal to the average annual net earnings of the business or farm operation provided that:

(a) the payment shall not be less or more than the amounts set forth in section 202(c) of the federal act;

(b) in the case of a business, no payment shall be made under this subsection unless the acquiring agency is satisfied that the business cannot be relocated without a substantial loss of its existing patronage and is not a part of a commercial enterprise having at least one other establishment not being acquired by an agency which is engaged in the same or similar business.

History: En. Sec. 3, Ch. 3, 2nd Ex. L. 1971; R.C.M. 1947, 93-9929.

70-31-202. Additional payments for displacement from dwelling owned by occupant. (1) In addition to payments otherwise authorized by this chapter, the acquiring agency shall make an additional payment to any displaced person who is displaced from a dwelling actually owned and occupied by such displaced person for not less than 180 days prior to the initiation of negotiations for the acquisition of the property. The additional payment shall include the following elements:

(a) the amount may not exceed the amount allowed under section 203 of the federal act;

(b) the amount, if any, which when added to the acquisition cost of the dwelling acquired by the agency equals the reasonable cost of a comparable replacement dwelling which is a decent, safe, and sanitary dwelling adequate to accommodate such displaced person, reasonably accessible to public services and places of employment and available on the private market. All determinations required to carry out this subsection (1)(b) shall be made in accordance with regulations issued by the acquiring agency.

(c) the amount, if any, which will compensate the displaced person for any increased interest costs which the person is required to pay for financing the acquisition of any comparable replacement dwelling. The amount shall be paid only if the dwelling acquired by the agency was encumbered by a bona fide mortgage which was a valid lien on such dwelling for not less than 180 days prior to the initiation of negotiations for the acquisition of the dwelling. The amount shall be equal to the excess in the aggregate interest and other debt service costs of that amount of the principal of the mortgage on the replacement dwelling which is equal to the unpaid balance of the mortgage on the acquired dwelling over the remainder term of the mortgage on the acquired dwelling reduced to discounted present value. The discount rate shall be the prevailing interest rate paid on savings deposits by commercial banks in the general area in which the replacement dwelling is located.

(d) reasonable expenses incurred by the displaced person for evidence of title, recording fees, and other closing costs incident to the purchase of the replacement dwelling but not including prepaid expenses.

(2) The additional payment authorized by this section shall be made only to a displaced person who purchases and occupies a replacement dwelling which is decent, safe, and sanitary not later than the end of the 1-year period beginning on the date on which he received from the agency final payment of all costs of the acquired dwelling or on the date on which he moves from the acquired dwelling, whichever is the later date.

History: En. Sec. 4, Ch. 3, 2nd Ex. L. 1971; R.C.M. 1947, 93-9930.

70-31-203. Additional payments for displacement from rented dwelling. In addition to amounts otherwise authorized by this chapter, the acquiring agency shall make a payment to or for any displaced person displaced from any dwelling not eligible to receive a payment under 70-31-202 if the dwelling was actually and lawfully occupied by the displaced person for not less than 90 days prior to the initiation of negotiations for acquisition of such dwelling. The payment shall be either:

(1) the amount necessary to enable the displaced person to lease or rent, for a period not to exceed 4 years, a decent, safe, and sanitary dwelling of standards adequate to accommodate such person in areas not generally less desirable in regard to public utilities and public and commercial facilities and reasonably accessible to his place of employment but not to exceed the amount allowable under section 204 of the federal act; or

(2) the amount necessary to enable such person to make a down payment (including reasonable expenses for evidence of title, recording fees, and other closing costs incident to the purchase of a dwelling but not including prepaid expenses) on the purchase of a decent, safe, and sanitary dwelling of standards adequate to accommodate such person in areas not generally less desirable in regard to public utilities and public and commercial facilities. The amount payable under this subsection (2) shall not exceed the amount allowable under section 204 of the federal act and shall be subject to the same matching requirements as under said section.

History: En. Sec. 5, Ch. 3, 2nd Ex. L. 1971; R.C.M. 1947, 93-9931.

70-31-204. Relocation advisory services — contracted services. (1) Whenever the acquisition of real property for a program or project of an agency (for which federal financial assistance is available to pay all or any part of the cost) will result in the displacement of any person, the agency shall provide a relocation assistance advisory program for displaced persons which offers the services described in this section. If the acquiring agency determines that any person occupying property immediately adjacent to the real property acquired is caused substantial economic injury because of the acquisition, it may offer such person relocation advisory services.

(2) The relocation advisory service may include such budget, debt management, and related counseling services as the acquiring agency determines will assist the displaced person. The relocation assistance program shall include such measures, facilities, or services as may be necessary or appropriate in order to:

(a) determine the need, if any, of displaced persons for relocation assistance;

(b) provide current and continuing information on the availability, prices, and rentals of comparable decent, safe, and sanitary sales and rental housing and of comparable commercial properties and locations for displaced businesses;

(c) assist a displaced person displaced from his business or farm operation in obtaining and becoming established in a suitable replacement location;

(d) supply information concerning federal and state housing programs, disaster loan programs, and other federal or state programs offering assistance to displaced persons;

(e) provide other advisory services to displaced persons in order to minimize hardships to displaced persons in adjusting to relocation; and

(f) secure the coordination of relocation activities with other project activities and other planned or proposed federal or state actions in the community or nearby areas which may affect the relocation program.

(3) In order to prevent unnecessary expenses and duplication of functions and to promote uniform and effective administration of relocation assistance programs, an agency may enter into contracts with any individual, firm, association, or corporation for services in connection with such programs or may carry out its functions under this chapter through any federal or state agency having an established organization for conducting relocation assistance programs. Each agency whenever practicable shall utilize the services of state or local housing agencies or other agencies having experience in the administration or conduct of similar housing assistance activities.

History: **En. Sec. 6, Ch. 3, 2nd Ex. L. 1971; R.C.M. 1947, 93-9932.**

70-31-205. Assurance of availability of suitable replacement dwellings. (1) Whenever the acquisition of real property for a program or project of an agency (for which federal financial assistance is available to pay all or any part of the cost) will result in the displacement of any person, the agency shall assure that, within a reasonable period of time prior to displacement, there will be available in areas not generally less desirable in regard to public utilities and public and commercial facilities and at rents or prices within the financial means of the families and individuals displaced decent, safe, and sanitary dwellings, as defined by the federal agency concerned with administering the federal financial assistance, equal in number to the number of and available to such displaced persons who require such dwellings and reasonably accessible to their places of employment.

(2) The provisions of subsection (1) create no rights or liabilities and shall not affect the validity of any property acquisition by purchase or condemnation.

History: En. Secs. 7, 17, Ch. 3, 2nd Ex. L. 1971; R.C.M. 1947, 93-9933, 93-9943(1).

70-31-206. Relocation costs included in project costs — property contributed incident to federal program. (1) The acquiring agency shall include the cost of providing payments and assistance under the provisions of this chapter in the cost of any project for which federal financial assistance is available to pay all or any part of the cost.

(2) The acquiring agency shall also provide the payments and assistance and assure the availability of replacement housing for displaced persons who are displaced as a result of real property being acquired by an agency and furnished as a required contribution incident to a federal program or project.

History: En. Sec. 8, Ch. 3, 2nd Ex. L. 1971; R.C.M. 1947, 93-9934.

70-31-207. Appeal from eligibility determination. Any person aggrieved by final administrative determination concerning eligibility for relocation payments authorized by this chapter may appeal such determination to the district court of the county in which the land acquired is located.

History: En. Sec. 10, Ch. 3, 2nd Ex. L. 1971; R.C.M. 1947, 93-9936.

Part 3

Rights and Duties Relating to Condemnation

70-31-301. Appraisal, negotiation, and other condemnation policies mandated. An agency which acquires real property for a program or project (for which federal financial assistance will be available to pay all or any part of the cost of such program or project) shall comply with the following policies:

(1) The agency shall make every reasonable effort to acquire expeditiously real property by negotiation.

(2) Real property shall be appraised before the initiation of negotiations, and the owner or his designated representative shall be given an opportunity to accompany the appraiser during his inspection of the property.

(3) Before the initiation of negotiations for real property, an amount shall be established which it is reasonably believed is just compensation therefor and such amount shall be offered for the property. In no event shall such amount be less than the approved appraisal of the fair market value of such property. Any decrease or increase in the fair market value of real property prior to the date of valuation caused by the public improvement for which such property is acquired or by the likelihood that the property would be acquired for such improvement, other than that due to physical deterioration

within the reasonable control of the owner, shall be disregarded in determining the compensation for the property. The owner of the real property to be acquired shall be provided with a written statement of and summary of the basis for the amount established as just compensation. Where appropriate, the just compensation for the real property acquired and for damages to remaining real property shall be separately stated.

(4) No owner shall be required to surrender possession of real property before the agreed purchase price is paid or before there is deposited with the court, in accordance with applicable law, for the benefit of the owner, an amount not less than the approved appraisal of the fair market value of such property or the amount of the award of compensation in the condemnation proceeding of such property.

(5) The construction or development of a program or project (for which federal financial assistance will be available to pay all or any part of the cost of the program or project) shall be so scheduled that, to the greatest extent practicable, no person lawfully occupying real property shall be required to move from a dwelling (assuming a replacement dwelling will be available) or to move his business or farm operation without at least 90 days' written notice of the date by which such move is required.

(6) If an owner or tenant is permitted to occupy the real property acquired on a rental basis for a short term or for a period subject to termination by the acquiring agency on short notice, the amount of rent required shall not exceed the fair rental value of the property to a short-term occupier.

(7) In no event shall the time of condemnation be advanced or negotiations or condemnation and the deposit of funds in court for the use of the owner be deferred or any other action coercive in nature be taken to compel an agreement on the price to be paid for the property.

(8) If an interest in real property is to be acquired by exercise of the power of eminent domain, formal condemnation proceedings shall be instituted. The acquiring agency shall not intentionally make it necessary for an owner to institute legal proceedings to prove the fact of the taking of his real property.

(9) If the acquisition of only part of the property would leave its owner with an uneconomic remnant, an offer to acquire the entire property shall be made.

History: En. Sec. 11, Ch. 3, 2nd Ex. L. 1971; R.C.M. 1947, 93-9937.

70-31-302. Reimbursement of closing costs and taxes incurred by owner. Any agency acquiring real property for a program or project (for which federal financial assistance will be available to pay all or any part of the cost of the program or project) shall, as soon as practicable after the date of payment of the purchase price or the date of deposit into court of funds to satisfy the award of compensation in a condemnation proceeding to acquire real property, whichever is the earlier, reimburse the owner to the extent the acquiring agency deems fair and reasonable for:

(1) expenses he necessarily incurred for recording fees, transfer taxes, and similar expenses incidental to conveying such real property to the acquiring agency;

(2) penalty costs for prepayment for any preexisting recorded mortgage or deed of trust entered into in good faith encumbering such real property; and

(3) the pro rata portion of real property taxes paid which are allocable to a period subsequent to the date of vesting title in the acquiring agency or the effective date of possession of such real property by the acquiring agency, whichever is the earlier.

History: **En. Sec. 12, Ch. 3, 2nd Ex. L. 1971; R.C.M. 1947, 93-9938.**

70-31-303. Inverse condemnation — reimbursement of expenses of proceeding. Where an inverse condemnation proceeding is instituted by the owner of any right, title, or interest in real property because of the alleged taking of his property for any program or project (for which federal financial assistance will be available to pay all or any part of the cost of the program or project), the court rendering a judgment for the plaintiff in such proceeding and awarding compensation for the taking of property or attorney for the acquiring agency effecting a settlement of any such proceeding shall determine and award or allow to such plaintiff as a part of such judgment or settlement such sum as will, in the opinion of the court or such attorney, reimburse such plaintiff for his reasonable costs, disbursements, and expenses including reasonable attorney, appraisal, and engineering fees actually incurred because of such proceeding.

History: **En. Sec. 14, Ch. 3, 2nd Ex. L. 1971; R.C.M. 1947, 93-9940.**

70-31-304. Reimbursement of costs when condemnation proceedings dismissed or abandoned. Where a condemnation proceeding is instituted by an agency to acquire real property for a program or project (for which federal financial assistance is available) and the final judgment is that the real property cannot be acquired by condemnation or that the proceeding is abandoned, the owner of any right, title, or interest in such real property shall be paid such sum as will, in the opinion of the court, reimburse such owner for his reasonable attorney, appraisal, and engineering fees actually incurred because of the condemnation proceedings. The award of such sums will be paid by the agency which sought to condemn the property.

History: **En. Sec. 13, Ch. 3, 2nd Ex. L. 1971; R.C.M. 1947, 93-9939.**

70-31-305. Acquisition of buildings and improvements affected. (1) Where any interest in real property is acquired for a program or project (for which federal assistance will be available to pay all or any part of the cost of the program or project), the acquiring agency shall acquire an equal interest in all buildings, structures, or other improvements located upon the real property so acquired and which are required to be removed from such real property or which the acquiring agency determines will be adversely affected by the use to which such real property will be put.

(2) For the purpose of determining the just compensation to be paid for any building, structure, or other improvement required to be acquired by subsection (1) of this section, such building, structure, or other improvement shall be deemed to be a part of the real property to be acquired notwithstanding the right or obligation of a tenant, as against the owner of any other interest in the real property, to remove such building, structure, or improvement at the expiration of his term; and the fair market value which such

building, structure, or improvement contributes to the fair market value of the real property to be acquired or the fair market value of such building, structure, or improvement for removal from the real property, whichever is the greater, shall be paid to the tenant therefor.

(3) Payment for such buildings, structures, or improvements as set forth in subsection (2) shall not result in duplication of any payments otherwise authorized by state law. No such payment shall be made unless the owner of the land involved disclaims all interest in the improvements of the tenant. In consideration for any such payment, the tenant shall assign, transfer, and release all his right, title, and interest in and to such improvements. Nothing in this subsection or subsection (2) shall be construed to deprive the tenant of any rights to reject payment and to obtain payment for such property interests in accordance with other laws of the state.

History: En. Sec. 15, Ch. 3, 2nd Ex. L. 1971; R.C.M. 1947, 93-9941.

CHAPTER 32

HOMESTEADS

Part 1 — Establishment of the Homestead

Section
70-32-101. Of what homestead consists.
70-32-102. Repealed. Sec. 9, Ch. 370, L. 1981.
70-32-103. From whose property homestead may be selected.
70-32-104. Limitations on quantity and value which may be selected.
70-32-105. Mode of selection — declaration required.
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70-32-203. Execution under judgments not enumerated — application required.
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70-32-210. Sale when land cannot be divided.
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Part 3 — Conveyance, Encumbrance, and Abandonment of Homestead

70-32-301. How conveyed or encumbered — instrument.
70-32-302. How abandoned — declaration.
70-32-303. When declaration effective.

Part 1

Establishment of the Homestead

70-32-101. Of what homestead consists. The homestead consists of the dwelling house or mobile home, and all appurtenances, in which the claimant resides and the land, if any, on which the same is situated, selected as provided in this chapter.

History: En. Sec. 1670, Civ. C. 1895; re-en. Sec. 4694, Rev. C. 1907; re-en. Sec. 6945, R.C.M. 1921; Cal. Civ. C. Sec. 1237; re-en. Sec. 6945, R.C.M. 1935; R.C.M. 1947, 33-101; amd. Sec. 1, Ch. 370, L. 1981.

Compiler's Comments

1981 Amendment: Inserted "or mobile home, and all appurtenances" after "dwelling house"; inserted "if any" after "and the land".

70-32-102. Repealed. Sec. 9, Ch. 370, L. 1981.

History: En. Sec. 1694, Civ. C. 1895; re-en. Sec. 4718, Rev. C. 1907; re-en. Sec. 6969, R.C.M. 1921; Cal. Civ. C. Sec. 1261; amd. Sec. 1, Ch. 86, L. 1925; re-en. Sec. 6969, R.C.M. 1935; amd. Sec. 3, Ch. 1, L. 1975; R.C.M. 1947, 33-125.

70-32-103. From whose property homestead may be selected. If the claimant be married, the homestead may be selected from the property of either spouse. When the claimant is not married, the homestead may be selected from any of his or her property.

History: En. Sec. 1671, Civ. C. 1895; re-en. Sec. 4695, Rev. C. 1907; re-en. Sec. 6946, R.C.M. 1921; Cal. Civ. C. Sec. 1238; re-en. Sec. 6946, R.C.M. 1935; amd. Sec. 1, Ch. 1, L. 1975; R.C.M. 1947, 33-102; amd. Sec. 2, Ch. 370, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "but is head of a family within the meaning of 70-32-102" after "When the claimant is not married".

70-32-104. Limitations on quantity and value which may be selected. (1) Homesteads may be selected and claimed consisting of:

(a) a quantity of land not exceeding 320 acres used for agricultural purposes and the dwelling house or mobile home thereon and its appurtenances and not included in any municipality;

(b) a quantity of land not in a municipality, not exceeding 1 acre and not used for agricultural or commercial purposes, and the dwelling house or mobile home thereon and its appurtenances; or

(c) a quantity of land within a municipality, not exceeding one-fourth of an acre, and the dwelling house or mobile home thereon and its appurtenances.

(2) Such homestead, in either case, shall not exceed in value the sum of $40,000. However, in any proceedings instituted to determine the value of such homestead, the assessed value of the land with included appurtenances, if any, and of the dwelling house as appears on the last completed assessment roll preceding the institution of such proceedings shall be prima facie evidence of the value of the property claimed as a homestead.

History: En. Sec. 1693, Civ. C. 1895; re-en. Sec. 4717, Rev. C. 1907; re-en. Sec. 6968, R.C.M. 1921; Cal. Civ. C. Sec. 1260; amd. Sec. 1, Ch. 126, L. 1931; re-en. Sec. 6968, R.C.M. 1935; amd.

Sec. 1, Ch. 166, L. 1937; amd. Sec. 1, Ch. 50, L. 1941; amd. Sec. 1, Ch. 266, L. 1965; amd. Sec. 1, Ch. 300, L. 1973; R.C.M. 1947, 33-124; amd. Sec. 3, Ch. 370, L. 1981.

Compiler's Comments

1981 Amendment: In (1)(a), inserted "or mobile home" and substituted "municipality" for "town plot, city, or village"; inserted subsection (1)(b); in (1)(c), inserted "within a municipality" after "a quantity of land", deleted "being within a town plot, city, or village" after "one-fourth of an acre", and inserted "or mobile home" after "dwelling house"; in (2), increased the exemption from $20,000 to $40,000; and made minor changes in phraseology.

70-32-105. Mode of selection — declaration required. The person selecting a homestead must execute and acknowledge, in the same manner as a grant of real property is acknowledged, a declaration of homestead and file the same for record.

History: En. Sec. 1700, Civ. C. 1895; re-en. Sec. 4719, Rev. C. 1907; re-en. Sec. 6970, R.C.M. 1921; Cal. Civ. C. Sec. 1262; re-en. Sec. 6970, R.C.M. 1935; amd. Sec. 4, Ch. 1, L. 1975; R.C.M. 1947, 33-126; amd. Sec. 4, Ch. 370, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "The person selecting a homestead must" for "In order to select a homestead, the head of a family must".

70-32-106. Contents of declaration. The declaration of homestead must contain a statement that the person making it is residing on the premises and claims them as a homestead and a description of the premises.

History: En. Sec. 1701, Civ. C. 1895; re-en. Sec. 4720, Rev. C. 1907; re-en. Sec. 6971, R.C.M. 1921; Cal. Civ. C. Sec. 1263; re-en. Sec. 6971, R.C.M. 1935; amd. Sec. 5, Ch. 1, L. 1975; R.C.M. 1947, 33-127; amd. Sec. 5, Ch. 370, L. 1981.

Compiler's Comments

1981 Amendment: Deleted former subsection (1) relating to head of the family; deleted former subsection (4) relating to an estimate of cash value; combined the section to delete subsections; and made minor changes in phraseology.

70-32-107. Declaration to be recorded. The declaration must be recorded in the office of the county clerk of the county in which the land is situated.

History: En. Sec. 1702, Civ. C. 1895; re-en. Sec. 4721, Rev. C. 1907; re-en. Sec. 6972, R.C.M. 1921; Cal. Civ. C. Sec. 1264; re-en. Sec. 6972, R.C.M. 1935; R.C.M. 1947, 33-128.

Part 2

Homestead Exemption — Execution

70-32-201. Homestead exempt from execution generally. The homestead is exempt from execution or forced sale, except as in this chapter provided.

History: En. Sec. 1673, Civ. C. 1895; re-en. Sec. 4697, Rev. C. 1907; re-en. Sec. 6948, R.C.M. 1921; Cal. Civ. C. Sec. 1240; re-en. Sec. 6948, R.C.M. 1935; R.C.M. 1947, 33-104.

70-32-202. Execution allowed under certain judgments. The homestead is subject to execution or forced sale in satisfaction of judgments obtained:

(1) on debts secured by mechanics' or vendors' liens upon the premises;

(2) on debts secured by mortgages on the premises, executed and acknowledged by the husband and wife or by an unmarried claimant; or

(3) on debts secured by mortgages on the premises, executed and recorded before the declaration of homestead was filed for record.

History: En. Sec. 1674, Civ. C. 1895; re-en. Sec. 4698, Rev. C. 1907; re-en. Sec. 6949, R.C.M. 1921; Cal. Civ. C. Sec. 1241; re-en. Sec. 6949, R.C.M. 1935; R.C.M. 1947, 33-105(part); amd. Sec. 6, Ch. 370, L. 1981.

Compiler's Comments

1981 Amendment: Deleted former subsection (1) that read "before the declaration of homestead was filed for record and which constitute liens upon the premises"; made minor changes in phraseology.

70-32-203. Execution under judgments not enumerated — application required. When an execution for the enforcement of a judgment obtained in a case not within the classes enumerated in 70-32-202 is levied upon the homestead, the judgment creditor may apply to the district court of the county in which the homestead is situated or a judge thereof for the appointment of persons to appraise the value thereof.

History: En. Sec. 1678, Civ. C. 1895; re-en. Sec. 4702, Rev. C. 1907; re-en. Sec. 6953, R.C.M. 1921; Cal. Civ. C. Sec. 1245; re-en. Sec. 6953, R.C.M. 1935; R.C.M. 1947, 33-109.

70-32-204. Application for appraisal — contents — filing. (1) The application must be made upon a verified petition showing:

(a) the fact that an execution has been levied upon the homestead;

(b) the name of the claimant;

(c) that the value of the homestead exceeds the amount of the homestead exemption.

(2) The petition must be filed with the clerk of the district court.

History: En. Secs. 1679, 1680, Civ. C. 1895; re-en. Secs. 4703, 4704, Rev. C. 1907; re-en. Secs. 6954, 6955, R.C.M. 1921; Cal. Civ. C. Secs. 1246, 1247; re-en. Secs. 6954, 6955, R.C.M. 1935; R.C.M. 1947, 33-110, 33-111.

70-32-205. Service of petition — notice of hearing. A copy of the petition, with a notice of the time and place of hearing, must be served upon the claimant at least 2 days before the hearing.

History: En. Sec. 1681, Civ. C. 1895; re-en. Sec. 4705, Rev. C. 1907; re-en. Sec. 6956, R.C.M. 1921; Cal. Civ. C. Sec. 1248; re-en. Sec. 6956, R.C.M. 1935; R.C.M. 1947, 33-112.

70-32-206. Appointment of appraisers — oath. (1) At the hearing the judge may, upon proof of the service of a copy of the petition and notice and of the facts stated in the petition, appoint three disinterested residents and freeholders of the county to appraise the value of the homestead.

(2) The persons appointed, before entering upon the performance of their duties, must take an oath to faithfully perform the same.

History: En. Secs. 1682, 1683, Civ. C. 1895; re-en. Secs. 4706, 4707, Rev. C. 1907; re-en. Secs. 6957, 6958, R.C.M. 1921; Cal. Civ. C. Secs. 1249, 1250; re-en. Secs. 6957, 6958, R.C.M. 1935; R.C.M. 1947, 33-113, 33-114.

70-32-207. Duty of appraisers. They must view the premises and appraise the value thereof, and if the appraised value exceeds the homestead exemption, they must determine whether the land claimed can be divided without material injury.

History: En. Sec. 1684, Civ. C. 1895; re-en. Sec. 4708, Rev. C. 1907; re-en. Sec. 6959, R.C.M. 1921; Cal. Civ. C. Sec. 1251; re-en. Sec. 6959, R.C.M. 1935; R.C.M. 1947, 33-115.

70-32-208. Report of appraisers — contents. Within 15 days after their appointment they must make to the judge a report in writing, which report must show the appraised value and their determination upon the matter of a division of the land claimed.

History: En. Sec. 1685, Civ. C. 1895; re-en. Sec. 4709, Rev. C. 1907; re-en. Sec. 6960, R.C.M. 1921; Cal. Civ. C. Sec. 1252; re-en. Sec. 6960, R.C.M. 1935; R.C.M. 1947, 33-116.

70-32-209. Order dividing land — execution against remainder over exemption. If from the report it appears to the judge that the land claimed can be divided without material injury, he must by an order direct the appraisers to set off to the claimant so much of the land, including the residence, as will amount in value to the homestead exemption, and the execution may be enforced against the remainder of the land.

History: En. Sec. 1686, Civ. C. 1895; re-en. Sec. 4710, Rev. C. 1907; re-en. Sec. 6961, R.C.M. 1921; Cal. Civ. C. Sec. 1253; re-en. Sec. 6961, R.C.M. 1935; R.C.M. 1947, 33-117.

70-32-210. Sale when land cannot be divided. If from the report it appears to the judge that the land claimed exceeds in value the amount of the homestead exemption and that it cannot be divided, he must make an order directing its sale under execution.

History: En. Sec. 1687, Civ. C. 1895; re-en. Sec. 4711, Rev. C. 1907; re-en. Sec. 6962, R.C.M. 1921; Cal. Civ. C. Sec. 1254; re-en. Sec. 6962, R.C.M. 1935; R.C.M. 1947, 33-118.

70-32-211. Amount of bid. At such sale no bid must be received unless it exceeds the amount of the homestead exemption.

History: En. Sec. 1688, Civ. C. 1895; re-en. Sec. 4712, Rev. C. 1907; re-en. Sec. 6963, R.C.M. 1921; Cal. Civ. C. Sec. 1255; re-en. Sec. 6963, R.C.M. 1935; R.C.M. 1947, 33-119.

70-32-212. Application of proceeds of sale. If the sale is made, the proceeds thereof, to the amount of the homestead exemption, must be paid to the claimant and the balance applied to the satisfaction of the execution.

History: En. Sec. 1689, Civ. C. 1895; re-en. Sec. 4713, Rev. C. 1907; re-en. Sec. 6964, R.C.M. 1921; Cal. Civ. C. Sec. 1256; re-en. Sec. 6964, R.C.M. 1935; R.C.M. 1947, 33-120.

70-32-213. Sale proceeds equal to exemption protected. The money paid to the claimant is entitled, for the period of 6 months thereafter, to the same protection against legal process and the voluntary disposition of either spouse which the law gives to the homestead.

History: En. Sec. 1690, Civ. C. 1895; re-en. Sec. 4714, Rev. C. 1907; re-en. Sec. 6965, R.C.M. 1921; Cal. Civ. C. Sec. 1257; re-en. Sec. 6965, R.C.M. 1935; amd. Sec. 2, Ch. 1, L. 1975; R.C.M. 1947, 33-121.

70-32-214. Compensation of appraisers. The court must fix the compensation of the appraisers, not to exceed $3 per day each for the time actually engaged.

History: En. Sec. 1691, Civ. C. 1895; re-en. Sec. 4715, Rev. C. 1907; re-en. Sec. 6966, R.C.M. 1921; Cal. Civ. C. Sec. 1258; re-en. Sec. 6966, R.C.M. 1935; R.C.M. 1947, 33-122.

70-32-215. Costs. The execution creditor must pay the costs of these proceedings in the first instance, but in the cases provided for in 70-32-209 and 70-32-210, the amount so paid must be added as costs on execution and collected accordingly.

History: En. Sec. 1692, Civ. C. 1895; re-en. Sec. 4716, Rev. C. 1907; re-en. Sec. 6967, R.C.M. 1921; Cal. Civ. C. Sec. 1259; re-en. Sec. 6967, R.C.M. 1935; R.C.M. 1947, 33-123.

Part 3

Conveyance, Encumbrance, and Abandonment of Homestead

70-32-301. How conveyed or encumbered — instrument. The homestead of a married person cannot be conveyed or encumbered unless the instrument by which it is conveyed or encumbered is executed and acknowledged by both husband and wife.

History: En. Sec. 1675, Civ. C. 1895; re-en. Sec. 4699, Rev. C. 1907; re-en. Sec. 6950, R.C.M. 1921; Cal. Civ. C. Sec. 1242; re-en. Sec. 6950, R.C.M. 1935; R.C.M. 1947, 33-106.

70-32-302. How abandoned — declaration. A homestead can be abandoned only by a declaration of abandonment or a grant thereof executed and acknowledged by:

(1) the husband and wife if the claimant is married;
(2) the claimant if unmarried.

History: En. Sec. 1676, Civ. C. 1895; re-en. Sec. 4700, Rev. C. 1907; re-en. Sec. 6951, R.C.M. 1921; Cal. Civ. C. Sec. 1243; re-en. Sec. 6951, R.C.M. 1935; R.C.M. 1947, 33-107.

70-32-303. When declaration effective. A declaration of abandonment is effectual only from the time it is filed in the office in which the homestead was recorded.

History: En. Sec. 1677, Civ. C. 1895; re-en. Sec. 4701, Rev. C. 1907; re-en. Sec. 6952, R.C.M. 1921; Cal. Civ. C. Sec. 1244; re-en. Sec. 6952, R.C.M. 1935; R.C.M. 1947, 33-108.

TITLE 71

MORTGAGES, PLEDGES, AND LIENS

Ch.
1. Mortgages.
2. Pledges.
3. Liens.

CHAPTER 1

MORTGAGES

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Part 1

General Provisions

71-1-101. Definition. "Mortgage" is a contract by which specific property is hypothecated for the performance of an act, without the necessity of a change of possession.

History: En. Sec. 3810, Civ. C. 1895; re-en. Sec. 5731, Rev. C. 1907; re-en. Sec. 8246, R.C.M. 1921; Cal. Civ. C. Sec. 2920; Field Civ. C. Sec. 1608; re-en. Sec. 8246, R.C.M. 1935; R.C.M. 1947, 52-101.

71-1-102. Power of attorney to execute. A power of attorney to execute a mortgage must be in writing, subscribed, acknowledged or proved, certified, and recorded in like manner as powers of attorney for grants of real property.

History: En. Sec. 3822, Civ. C. 1895; re-en. Sec. 5743, Rev. C. 1907; re-en. Sec. 8258, R.C.M. 1921; Cal. Civ. C. Sec. 2933; re-en. Sec. 8258, R.C.M. 1935; R.C.M. 1947, 52-113.

71-1-103. Mortgage a special lien — on what a lien. (1) The lien of a mortgage is special, unless otherwise expressly agreed, and is independent of possession.

(2) A mortgage is a lien upon everything that would pass by a grant of the property.

History: (1)En. Sec. 3812, Civ. C. 1895; re-en. Sec. 5733, Rev. C. 1907; re-en. Sec. 8248, R.C.M. 1921; Cal. Civ. C. Sec. 2923; Field Civ. C. Sec. 1609; re-en. Sec. 8248, R.C.M. 1935; Sec. 52-103,

R.C.M. 1947; (2)En. Sec. 3815, Civ. C. 1895; re-en. Sec. 5736, Rev. C. 1907; re-en. Sec. 8251, R.C.M. 1921; Cal. Civ. C. Sec. 2926; Based on Field Civ. C. Sec. 1617; re-en. Sec. 8251, R.C.M. 1935; Sec. 52-106, R.C.M. 1947; R.C.M. 1947, 52-103, 52-106.

71-1-104. Mortgage not a personal obligation. A mortgage does not bind the mortgagor personally to perform the act for the performance of which it is a security unless there is an express covenant therein to that effect.

History: En. Sec. 3817, Civ. C. 1895; re-en. Sec. 5738, Rev. C. 1907; re-en. Sec. 8253, R.C.M. 1921; Cal. Civ. C. Sec. 2928; re-en. Sec. 8253, R.C.M. 1935; R.C.M. 1947, 52-108.

71-1-105. Mortgagee not entitled to possession. A mortgage does not entitle the mortgagee to the possession of the property unless authorized by the express terms of the mortgage, but after the execution of the mortgage, the mortgagor may agree to such change of possession without a new consideration.

History: En. Sec. 3816, Civ. C. 1895; re-en. Sec. 5737, Rev. C. 1907; re-en. Sec. 8252, R.C.M. 1921; Cal. Civ. C. Sec. 2927; Based on Field Civ. C. Sec. 1620; re-en. Sec. 8252, R.C.M. 1935; R.C.M. 1947, 52-107.

71-1-106. Waste prohibited. No person whose interest is subject to the lien of a mortgage may do any act which will substantially impair the mortgagee's security.

History: En. Sec. 3818, Civ. C. 1895; re-en. Sec. 5739, Rev. C. 1907; re-en. Sec. 8254, R.C.M. 1921; Cal. Civ. C. Sec. 2929; re-en. Sec. 8254, R.C.M. 1935; R.C.M. 1947, 52-109.

71-1-107. Transfers of interest. (1) Every transfer of an interest in property, other than in trust, made only as a security for the performance of another act is to be deemed a mortgage, except when in the case of personal property it is accompanied by actual change of possession, in which case it is deemed a pledge.

(2) The fact that a transfer was made subject to defeasance on a condition may, for the purpose of showing such transfer to be a mortgage, be proved (except as against a subsequent purchaser or encumbrancer for value and without notice), though the fact does not appear by the terms of the instrument.

History: (1)En. Sec. 3813, Civ. C. 1895; re-en. Sec. 5734, Rev. C. 1907; re-en. Sec. 8249, R.C.M. 1921; Cal. Civ. C. Sec. 2924; Based on Field Civ. C. Sec. 1610; re-en. Sec. 8249, R.C.M. 1935; Sec. 52-104, R.C.M. 1947; (2)En. Sec. 3814, Civ. C. 1895; re-en. Sec. 5735, Rev. C. 1907; re-en. Sec. 8250, R.C.M. 1921; Cal. Civ. C. Sec. 2925; Field Civ. C. Sec. 1612; re-en. Sec. 8250, R.C.M. 1935; Sec. 52-105, R.C.M. 1947; R.C.M. 1947, 52-104, 52-105.

71-1-108. Subsequently acquired title. Title acquired by the mortgagor subsequent to the execution of the mortgage inures to the mortgagee as security for the debt in like manner as if acquired before the execution.

History: En. Sec. 3819, Civ. C. 1895; re-en. Sec. 5740, Rev. C. 1907; re-en. Sec. 8255, R.C.M. 1921; Cal. Civ. C. Sec. 2930; re-en. Sec. 8255, R.C.M. 1935; R.C.M. 1947, 52-110.

71-1-109. Mortgage of property adversely held. A mortgage may be created upon property held adversely to the mortgagor.

History: En. Sec. 3811, Civ. C. 1895; re-en. Sec. 5732, Rev. C. 1907; re-en. Sec. 8247, R.C.M. 1921; Cal. Civ. C. Sec. 2921; Field Civ. C. Sec. 1614; re-en. Sec. 8247, R.C.M. 1935; R.C.M. 1947, 52-102.

71-1-110. Passage of mortgage by assignment of debt. The assignment of a debt secured by mortgage carries with it the security.

History: En. Sec. 3825, Civ. C. 1895; re-en. Sec. 5746, Rev. C. 1907; re-en. Sec. 8261, R.C.M. 1921; Cal. Civ. C. Sec. 2936; re-en. Sec. 8261, R.C.M. 1935; R.C.M. 1947, 52-115.

71-1-111. Power of sale. A power of sale may be conferred by a mortgage upon the mortgagee or any other person, to be exercised after a breach of the obligation for which the mortgage is a security.

History: En. Sec. 3821, Civ. C. 1895; re-en. Sec. 5742, Rev. C. 1907; re-en. Sec. 8257, R.C.M. 1921; Cal. Civ. C. Sec. 2932; Field Civ. C. Sec. 1615; re-en. Sec. 8257, R.C.M. 1935; R.C.M. 1947, 52-112.

71-1-112. Applicable laws. (1) In the event of conflict between any provision of this part and the Uniform Commercial Code, the latter shall govern.

(2) All mortgages and deeds of trust covering both real and personal property executed by a corporation, association, or partnership or by an individual or individuals are governed by the law relating to mortgages or deeds of trust of real property so far as the real property is concerned and by the Uniform Commercial Code—Secured Transactions so far as the personal property is concerned.

History: (1)En. 52-117 by Sec. 11-133, Ch. 264, L. 1963; Sec. 52-117, R.C.M. 1947; (2)En. Sec. 3849, Civ. C. 1895; re-en. Sec. 5756, Rev. C. 1907; amd. Sec. 1, Ch. 72, L. 1921; amd. Sec. 1, Ch. 39, L. 1927; amd. Sec. 1, Ch. 11, L. 1931; re-en. Sec. 8273, R.C.M. 1935; amd. Sec. 11-134, Ch. 264, L. 1963; Sec. 52-212, R.C.M. 1947; R.C.M. 1947, 52-117, 52-212.

71-1-113. Limit on the amount of funds on reserve. Except as provided in 71-1-114, if a lending institution requires a borrower under a mortgage or trust indenture of real property to include in his regular payment additional payment into a reserve fund held by the lending institution for the future payment of property taxes, insurance premiums, and other expenses, the amount of funds on reserve may not exceed 110% of the projected amount needed to pay such expenses.

History: En. Sec. 1, Ch. 490, L. 1979.

71-1-114. Exception to limitation. If the borrower desires, the lending institution and borrower may enter into a written contract in which they agree that the funds on reserve exceed 110% of the reasonable amount needed to pay such expenses.

History: En. Sec. 2, Ch. 490, L. 1979.

71-1-115. Record of reserve fund required. Every lending institution shall keep an itemized record of each payment entered into the reserve fund and each disbursement withdrawn from the reserve fund. The lending institution shall annually mail a statement of total receipts and disbursements to each borrower under a mortgage or trust indenture of real property.

History: En. Sec. 3, Ch. 490, L. 1979.

Part 2

Mortgages of Real Property

71-1-201. What real property may be mortgaged — debts secured. Any interest in real property which is capable of being transferred may be mortgaged. Such property or interest may be mortgaged to secure existing debts, to secure debts created simultaneously with the execution of the mortgage, and to secure advances then in contemplation but to be made in the future.

History: En. Sec. 3840, Civ. C. 1895; re-en. Sec. 5747, Rev. C. 1907; re-en. Sec. 8262, R.C.M. 1921; Cal. Civ. C. Sec. 2947; re-en. Sec. 8262, R.C.M. 1935; amd. Sec. 1, Ch. 150, L. 1949; R.C.M. 1947, 52-201(part).

71-1-202. Mortgage not considered conveyance — recovery of possession. A mortgage of real property shall not be deemed a conveyance, whatever its terms, so as to enable the owner of the mortgage to recover possession of the real property without a foreclosure and sale. When the mortgage confers a power of sale, as mentioned in 71-1-111, possession may be recovered according to the terms of the mortgage.

History: En. Sec. 239, p. 93, Bannack Stat.; re-en. Sec. 260, p. 188, L. 1867; re-en. Sec. 309, p. 95, Cod. Stat. 1871; re-en. Sec. 359, p. 139, L. 1877; re-en. Sec. 359, 1st Div. Rev. Stat. 1879; re-en. Sec. 371, 1st Div. Comp. Stat. 1887; amd. Sec. 1316, C. Civ. Proc. 1895; re-en. Sec. 6877, Rev. C. 1907; re-en. Sec. 9495, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 744; re-en. Sec. 9495, R.C.M. 1935; R.C.M. 1947, 93-6219.

71-1-203. Writing required. A mortgage of real property can be created, renewed, or extended only by writing, with the formalities required in the case of a grant of real property.

History: En. Sec. 3842, Civ. C. 1895; re-en. Sec. 5749, Rev. C. 1907; re-en. Sec. 8264, R.C.M. 1921; Cal. Civ. C. Sec. 2922; Field Civ. C. Sec. 1623; re-en. Sec. re-en. Sec. 8264, R.C.M. 1935; R.C.M. 1947, 52-203.

71-1-204. Form of mortgage. A mortgage of real property may be made in substantially the following form:

"This mortgage, made the .... day of ...., in the year ...., by A.B., of ...., mortgagor, to C.D., of ...., mortgagee, witnesseth:

That the mortgagor mortgages to the mortgagee (here describe the property), as security for the payment to him of .... dollars, on (or before) the .... day of ...., in the year ...., with interest thereon (or as security for the payment of an obligation, describing it, etc.). A.B."

History: En. Sec. 3841, Civ. C. 1895; re-en. Sec. 5748, Rev. C. 1907; re-en. Sec. 8263, R.C.M. 1921; Cal. Civ. C. Sec. 2948; re-en. Sec. 8263, R.C.M. 1935; R.C.M. 1947, 52-202.

71-1-205. Priorities. Any lien entitled to actual priority over the lien of mortgage by force of any express provision of the laws of this state shall continue to have priority to the extent prescribed by law.

History: En. Sec. 3840, Civ. C. 1895; re-en. Sec. 5747, Rev. C. 1907; re-en. Sec. 8262, R.C.M. 1921; Cal. Civ. C. Sec. 2947; re-en. Sec. 8262, R.C.M. 1935; amd. Sec. 1, Ch. 150, L. 1949; R.C.M. 1947, 52-201(part).

71-1-206. Future advances. (1) The total amount of all future advances contemplated and to be subject to mortgage protection must be stated in the mortgage, provided the mortgagee may reserve the right, at the mortgagee's option, to refuse to make all or any part thereof.

(2) The lien for said stated amount of said future advances shall have priority to the same extent as if the amount thereof had been actually advanced by the mortgagee to the mortgagor at the time of the execution of the mortgage.

(3) The mortgagee shall, upon demand of the mortgagor or a creditor, furnish a statement of all such advances and amounts paid on the principal sum secured, provided such statement shall not impair or affect the lien created for all advances. Upon receipt of such statement or at any other time following the execution and delivery of the mortgage, the mortgagor may deliver written notice, duly acknowledged, to the mortgagee plainly stating that the mortgagor does not desire to request or apply for any future advances if none have been allowed or for any further advances if additional advances have in fact been theretofore allowed under the mortgage, clearly identifying the mortgage by reference to its date, the parties thereto, and the principal amount of the original indebtedness and the limit placed on contemplated future advances, if allowed. Upon the recording of such written notice by the mortgagor in the county and counties where the mortgage is recorded, the lien of the mortgage shall continue to have priority, but only for the aggregate amount of the indebtedness then existing, including any advances theretofore made, interest due, and other charges as evidenced by the original loan-contract and indebtedness thereafter accumulating on such basis, exclusive of any other future advances originally contemplated.

History: En. Sec. 3840, Civ. C. 1895; re-en. Sec. 5747, Rev. C. 1907; re-en. Sec. 8262, R.C.M. 1921; Cal. Civ. C. Sec. 2947; re-en. Sec. 8262, R.C.M. 1935; amd. Sec. 1, Ch. 150, L. 1949; R.C.M. 1947, 52-201(part).

71-1-207. Recording of mortgages and assignments. (1) Mortgages of real property may be acknowledged or proved, certified, and recorded in like manner and with like effect as grants thereof.

(2) An assignment of a real estate mortgage may be recorded in like manner as a real estate mortgage and the record thereof shall operate as due and legal notice to the mortgagor and all persons subsequently deriving title to the mortgage from the assignor as well as to all other persons, including subsequent purchasers, encumbrancers, mortgagees, or other lien holders. Any such assignment shall contain the assignee's post-office address at his place of residence and shall not be entitled to be recorded or filed unless it contains such post-office address.

History: (1)En. Sec. 3844, Civ. C. 1895; re-en. Sec. 5751, Rev. C. 1907; re-en. Sec. 8266, R.C.M. 1921; Cal. Civ. C. Sec. 2952; re-en. Sec. 8266, R.C.M. 1935; Sec. 52-205, R.C.M. 1947; (2)En. Sec. 3823, Civ. C. 1895; re-en. Sec. 5744, Rev. C. 1907; re-en. Sec. 8259, R.C.M. 1921; Cal. Civ. C. Sec. 2934; amd. Sec. 1, Ch. 14, L. 1925; amd. Sec. 1, Ch. 159, L. 1935; re-en. Sec. 8259, R.C.M. 1935; amd. Sec. 11-131, Ch. 264, L. 1963; Sec. 52-114, R.C.M. 1947; R.C.M. 1947, 52-114, 52-205.

71-1-208. Recording of subordination or waiver agreements. A subordination agreement or a waiver in favor of subsequent purchasers, encumbrancers, or mortgagees as regards any real estate mortgage of record or the property therein included may be recorded in like manner as a real estate mortgage, and such record shall operate as due and legal notice to the mortgagor and the mortgagee and to all other interested persons. Any such subordination agreement or waiver shall be valid and binding so far as the mortgage therein referred to or the property covered by such mortgage is concerned, when executed by the record holder of the mortgage involved.

History: En. Sec. 1, Ch. 126, L. 1937; amd. Sec. 11-132, Ch. 264, L. 1963; R.C.M. 1947, 52-116.

71-1-209. Recording defeasance necessary to affect grant. When a grant of real property purports to be an absolute conveyance but is intended to be defeasible on the performance of certain conditions, such grant is not defeated or affected as against any person other than the grantee or his heirs or devisees or persons having actual notice unless an instrument of defeasance, duly executed and acknowledged, shall have been recorded in the office of the county clerk of the county where the property is situated.

History: En. Sec. 3843, Civ. C. 1895; re-en. Sec. 5750, Rev. C. 1907; re-en. Sec. 8265, R.C.M. 1921; Cal. Civ. C. Sec. 2950; re-en. Sec. 8265, R.C.M. 1935; R.C.M. 1947, 52-204.

71-1-210. Period of mortgage — renewal. Every mortgage of real property made, acknowledged, and recorded as provided by the laws of this state shall be good as against all from the time it is so recorded until 8 years after the maturity of the entire debt or obligation secured thereby and no longer, unless the mortgagee, his heirs, executors, administrators, representatives, or assigns shall, within 60 days after the expiration of said 8 years, file in the office of the county clerk where said mortgage is recorded an affidavit setting forth the date of said mortgage, when and where recorded, the amount of the debt secured thereby, and the amount remaining unpaid and that the mortgage is not renewed for the purpose of hindering, delaying, or defrauding creditors of the mortgagor or owner of the land, and upon the filing of said affidavit, the mortgage shall be valid against all persons for a further period of 8 years.

History: En. Sec. 1, Ch. 27, L. 1913; re-en. Sec. 8267, R.C.M. 1921; amd. Sec. 1, Ch. 104, L. 1933; re-en. Sec. 8267, R.C.M. 1935; R.C.M. 1947, 52-206.

71-1-211. Satisfaction of mortgage — record thereof. (1) A mortgage shall be discharged upon the record thereof by the county clerk in whose custody it shall be whenever there shall be presented to him a certificate executed by the mortgagee, his personal representative or assignee, acknowledged or proved and certified as in this code prescribed to entitle a conveyance to be recorded, specifying that such mortgage has been paid or otherwise satisfied or discharged.

(2) Every such certificate and the proof and acknowledgment thereof shall be recorded at full length, and a reference shall be made to the book and page containing such record in the mortgagor and mortgagee indexes as to the discharge of such mortgage.

History: En. Secs. 37, 38, p. 485, Bannack Stat.; re-en. Secs. 37, 38, p. 402, Cod. Stat. 1871; re-en. Secs. 214, 215, 5th Div. Rev. Stat. 1879; re-en. Secs. 272, 273, 5th Div. Comp. Stat. 1887; re-en. Secs. 3846, 3847, Civ. C. 1895; re-en. Secs. 5753, 5754, Rev. C. 1907; re-en. Secs. 8269, 8270, R.C.M. 1921; Cal. Civ. C. Secs. 2939, 2940; re-en. Secs. 8269, 8270, R.C.M. 1935; R.C.M. 1947, 52-208, 52-209; amd. Sec. 1, Ch. 127, L. 1981.

Compiler's Comments

1981 Amendment: Deleted former subsection (1) relating to recording the satisfaction of a mortgage on the mortgage record margin; made grammar change in first line of (1) to reflect deletion of former subsection (1); inserted "and page" after "book" in (2); substituted "mortgagor and mortgagee indexes as to the discharge of such mortgage" for "minutes of the discharge of such mortgage made by the county clerk upon the margin of the record thereof" at the end of (2).

71-1-212. Penalties for failure to give certificate of discharge or release after full performance. Any mortgagee or his personal representative or assignee, as the case may be, after the full performance of the conditions of the mortgage, whether before or after a breach thereof, who shall for the space of 30 days after being requested refuse or neglect to execute, acknowledge, and deliver to the mortgagor a certificate of discharge or release thereof shall be liable to the mortgagor, his heirs, or assigns in the sum of $100 and also for all actual damages occasioned by such neglect or refusal.

History: En. Sec. 39, p. 486, Bannack Stat.; re-en. Sec. 39, p. 402, Cod. Stat. 1871; re-en. Sec. 216, 5th Div. Rev. Stat. 1879; re-en. Sec. 274, 5th Div. Comp. Stat. 1887; re-en. Sec. 3748, Civ. C. 1895; re-en. Sec. 5755, Rev. C. 1907; amd. Sec. 1, Ch. 173, L. 1921; re-en. Sec. 8271, R.C.M. 1921; Cal. Civ. C. Sec. 2941; re-en. Sec. 8271, R.C.M. 1935; R.C.M. 1947, 52-210(part).

71-1-213. Discharge or release by other than mortgagee. (1) If the discharge or release is made by the personal representative of the mortgagee, it must be accompanied by a certified copy of his authority unless such authority is already of record in the office of the county clerk and recorder where the mortgage is recorded.

(2) If the discharge or release is made by an assignee, it must be accompanied by the assignment of the mortgage unless the assignment is already of record in the office of the county clerk and recorder where the mortgage is recorded.

(3) If the discharge or release is executed by an attorney in fact, the discharge or release must have attached to it the power of attorney under which it is made unless the power of attorney is already of record in the office of the county clerk and recorder where the mortgage is recorded.

(4) If the discharge or release is executed by the heir or heirs of the mortgagee, the discharge or release must be accompanied by a certified copy of an order or decree of a court of competent jurisdiction showing such authority unless the order or decree is already of record in the office of the county clerk and recorder where the mortgage is recorded.

(5) Foreign administrators and executors may discharge or release mortgages of record in Montana if the discharge or release of mortgages is accompanied by an authenticated copy of their letters of administration or letters testamentary, with the certificate of the clerk of the court in which the appointment was made that the same have not been revoked and are in full force, which certificate and certified copy of letters shall be recorded with the discharge or release of the mortgage. When presented and recorded, the discharge or release has the same effect as if the mortgage was discharged or released by the mortgagee.

History: En. Sec. 39, p. 486, Bannack Stat.; re-en. Sec. 39, p. 402, Cod. Stat. 1871; re-en. Sec. 216, 5th Div. Rev. Stat. 1879; re-en. Sec. 274, 5th Div. Comp. Stat. 1887; re-en. Sec. 3748, Civ. C. 1895; re-en. Sec. 5755, Rev. C. 1907; amd. Sec. 1, Ch. 173, L. 1921; re-en. Sec. 8271, R.C.M. 1921; Cal. Civ. C. Sec. 2941; re-en. Sec. 8271, R.C.M. 1935; R.C.M. 1947, 52-210(part); amd. Sec. 1, Ch. 11, L. 1979.

71-1-214 through 71-1-220 reserved.

71-1-221. Definition of foreclosure. The term "foreclosure" for the purpose of this part shall include sale or possession of real property made or taken whether by judicial proceedings or otherwise.

History: En. Sec. 2, Ch. 2, L. 1935; re-en. Sec. 9473.2, R.C.M. 1935; R.C.M. 1947, 93-6009.

71-1-222. Proceedings in foreclosure suits. (1) There is but one action for the recovery of debt or the enforcement of any right secured by mortgage upon real estate, which action must be in accordance with the provisions of this part. In such action the court may, by its judgment, direct:

(a) a sale of the encumbered property (or so much thereof as may be necessary);

(b) the application of the proceeds of the sale; and

(c) the payment of the costs of the court, the expenses of the sale, and the amount due the plaintiff.

(2) If it appears from the sheriff's return that the proceeds are insufficient and a balance still remains due, judgment can then be docketed for such balance against the defendant or defendants personally liable for the debt, and it becomes a lien upon the real estate of such judgment debtor, as in other cases on which execution may be issued.

(3) No person holding a conveyance from or under the mortgagor of the property mortgaged or having a lien thereon, which conveyance or lien does not appear of record in the proper office at the time of the commencement of the action, need be made a party to such action. The judgment therein rendered and the proceedings therein had are as conclusive against the party holding such unrecorded conveyance or lien as if he had been made a party to the action.

History: En. Sec. 223, p. 90, Bannack Stat.; en. Sec. 246, p. 185, L. 1867; re-en. Sec. 295, p. 92, Cod. Stat. 1871; re-en. Sec. 346, p. 135, L. 1877; re-en. Sec. 346, 1st Div. Rev. Stat. 1879; re-en. Sec. 358, 1st Div. Comp. Stat. 1887; amd. Sec. 1290, C. Civ. Proc. 1895; re-en. Sec. 6861, Rev. C. 1907; re-en. Sec. 9467, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 726; re-en. Sec. 9467, R.C.M. 1935; amd. Sec. 11-166, Ch. 264, L. 1963; R.C.M. 1947, 93-6001.

71-1-223. Power of sale. When a real estate mortgage confers a power of sale, either upon the mortgagee or any other person, to be executed after a breach of the obligation for which the mortgage is a security, either an action may be maintained under this part to foreclose or proceedings may be had under the provisions of the mortgage.

History: En. Sec. 1293, C. Civ. Proc. 1895; re-en. Sec. 6864, Rev. C. 1907; re-en. Sec. 9470, R.C.M. 1921; re-en. Sec. 9470, R.C.M. 1935; amd. Sec. 11-167, Ch. 264, L. 1963; R.C.M. 1947, 93-6004.

71-1-224. Sale — notice. Real estate sold under a power of sale given and contained in a mortgage of real estate, except in a trust indenture as defined in the "Small Tract Financing Act of Montana", shall be advertised for sale at least 30 days before the date fixed for such sale, in a newspaper in the county in which such real estate is situated, and in case there is no newspaper printed and published in said county, then by posting notices in at least five conspicuous places in said county, one of which notices must be posted on the land so advertised for sale. Two other notices must be posted in conspicuous places in the township in which said land is situated, one in such conspicuous place in said county as will be most likely to give notice to all persons interested in said sale, and one of said notices must be posted in a conspicuous place at the front door of the county courthouse of the county in which said land is located, and in addition to the publication or posting, as hereinbefore provided, notices of such sale must be served personally at least 30 days before the date fixed for such sale upon the occupant of the property so advertised for sale and upon the mortgagor if within the state of Montana and upon every person or persons having or claiming an interest of record in the real estate so advertised for sale who may be found within the state of Montana.

History: En. Sec. 1, Ch. 165, L. 1917; re-en. Sec. 9471, R.C.M. 1921; re-en. Sec. 9471, R.C.M. 1935; amd. Sec. 18, Ch. 177, L. 1963; R.C.M. 1947, 93-6005.

71-1-225. Surplus money from sale. If there be surplus money remaining after the payment of the amount due on the mortgage, lien, or encumbrance, with costs, the court may cause the same to be paid to the person entitled to it and in the meantime may direct it to be deposited in court.

History: En. Sec. 247, p. 186, L. 1867; re-en. Sec. 296, p. 92, Cod. Stat. 1871; re-en. Sec. 347, p. 136, L. 1877; re-en. Sec. 347, 1st Div. Rev. Stat. 1879; re-en. Sec. 359, 1st Div. Comp. Stat. 1887; re-en. Sec. 1291, C. Civ. Proc. 1895; re-en. Sec. 6862, Rev. C. 1907; re-en. Sec. 9468, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 727; re-en. Sec. 9468, R.C.M. 1935; R.C.M. 1947, 93-6002.

71-1-226. Proceedings when debt secured falls due at different times. If the debt for which the mortgage, lien, or encumbrance is held is not all due, as soon as sufficient of the property has been sold to pay the amount due, with costs, the sale must cease; and afterward, as often as more becomes due, for principal or interest, the court may, on motion, order more to be sold. But if the property cannot be sold in portions without injury to the parties, the whole may be ordered to be sold in the first instance and the entire debt and costs paid, there being a rebate of interest where such rebate is proper.

History: En. Sec. 248, p. 186, L. 1867; re-en. Sec. 297, p. 92, Cod. Stat. 1871; re-en. Sec. 348, p. 136, L. 1877; re-en. Sec. 348, 1st Div. Rev. Stat. 1879; re-en. Sec. 360, 1st Div. Comp. Stat. 1887; re-en. Sec. 1292, C. Civ. Proc. 1895; re-en. Sec. 6863, Rev. C. 1907; re-en. Sec. 9469, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 728; re-en. Sec. 9469, R.C.M. 1935; R.C.M. 1947, 93-6003.

71-1-227. Injunction to prevent injury to property. The court may, by injunction, upon good cause shown, restrain the party in possession from doing any act to the injury of real property during the foreclosure of a mortgage thereon.

History: En. Sec. 240, p. 93, Bannack Stat.; re-en. Sec. 261, p. 188, L. 1867; re-en. Sec. 310, p. 95, Cod. Stat. 1871; re-en. Sec. 360, p. 139, L. 1877; re-en. Sec. 360, 1st Div. Rev. Stat. 1879; re-en. Sec. 372, 1st Div. Comp. Stat. 1887; re-en. Sec. 1318, C. Civ. Proc. 1895; re-en. Sec. 6878, Rev. C. 1907; re-en. Sec. 9496, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 745; re-en. Sec. 9496, R.C.M. 1935; R.C.M. 1947, 93-6220(part).

71-1-228. Rights of redemption applicable. All of the rights, powers, and privileges concerning the redemption from sales of real estate applicable to the sales of real estate under foreclosure proceedings or sales under execution shall be granted and allowed to sales of real estate under and by virtue of the power of sale contained in any mortgage or deed of trust in this state, except to sales of real estate under and by virtue of the power of sale conferred upon a trustee under a trust indenture as defined in the "Small Tract Financing Act of Montana".

History: En. Sec. 2, Ch. 165, L. 1917; re-en. Sec. 9472, R.C.M. 1921; re-en. Sec. 9472, R.C.M. 1935; amd. Sec. 19, Ch. 177, L. 1963; R.C.M. 1947, 93-6006.

71-1-229. Possession of lands prior to foreclosure upon default and during period of redemption. The purchaser of lands at mortgage foreclosure is not entitled to the possession thereof as against the execution debtor during the period of redemption allowed by law while the execution debtor personally occupies the land as a home for himself and his family. It is unlawful to insert in any mortgage of real estate any provision intended to constitute a waiver by the owner of real estate personally occupying land as a home for himself and family of the provision of this section or any provision intended to give the mortgagee possession of the land or premises prior to foreclosure upon default of tax, principal, or interest payments. The intention hereof is to insure to such owner the possession of his land prior to foreclosure and during the year of redemption.

History: En. Sec. 1, Ch. 230, L. 1921; re-en. Sec. 9449, R.C.M. 1921; amd. Sec. 1, Ch. 150, L. 1933; re-en. Sec. 9449, R.C.M. 1935; R.C.M. 1947, 93-5841(part); amd. Sec. 2, Ch. 11, L. 1979.

71-1-230. Action to redeem mortgage. An action to redeem a mortgage of real property, with or without an account of rents and profits, may be brought by the mortgagor or those claiming under him against the mortgagee in possession or those claiming under him, unless he or they have continuously maintained an adverse possession of the mortgaged premises for 10 years after breach of some condition of the mortgage.

History: En. Sec. 521, C. Civ. Proc. 1895; re-en. Sec. 6454, Rev. C. 1907; re-en. Sec. 9044, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 346; re-en. Sec. 9044, R.C.M. 1935; R.C.M. 1947, 93-2616.

71-1-231. Redemption by multiple mortgagors. If there is more than one such mortgagor or more than one person claiming under a mortgagor, some of whom are not entitled to maintain such an action under the provisions of 71-1-230 or Title 27, chapter 2, any one of them who is entitled to maintain such an action may redeem therein a divided or undivided part of the mortgaged premises, according as his interest may appear, and have an accounting for a part of the rents and profits proportionate to his interest in the mortgaged premises, on payment of a part of the mortgage money bearing the same proportion to the whole of such money as the value of his divided or undivided interest in the premises bears to the whole of such premises.

History: En. Sec. 522, C. Civ. Proc. 1895; re-en. Sec. 6455, Rev. C. 1907; re-en. Sec. 9045, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 347; re-en. Sec. 9045, R.C.M. 1935; R.C.M. 1947, 93-2617.

71-1-232. Deficiency judgment not allowed on foreclosure of purchase price mortgage. Upon the foreclosure of any mortgage, executed to any vendor of real property or to his heirs, executors, administrators, or assigns for the balance of the purchase price of such real property, the mortgagee shall not be entitled to a deficiency judgment on account of such mortgage or note or obligation secured by the same.

History: En. Sec. 1, Ch. 2, L. 1935; re-en. Sec. 9473.1, R.C.M. 1935; R.C.M. 1947, 93-6008.

71-1-233. Attorney's fee on foreclosure. In an action to foreclose a mortgage of real property, the court must allow as a part of the costs a reasonable attorney's fee, which shall be fixed by the court, any stipulation in the instrument or any agreement between the parties to the contrary notwithstanding.

History: En. Sec. 1862, C. Civ. Proc. 1895; re-en. Sec. 7165, Rev. C. 1907; re-en. Sec. 9798, R.C.M. 1921; re-en. Sec. 9798, R.C.M. 1935; amd. Sec. 11-169, Ch. 264, L. 1963; R.C.M. 1947, 93-8613(part).

71-1-234. Attorney's fee — petition and notice. If the mortgagee shall demand attorneys' fees in case of the sale of real estate under and by virtue of the power of sale contained in any mortgage or deed of trust in this state, except in case of the sale of real estate by virtue of a power of sale conferred upon a trustee under a trust indenture as defined in the "Small Tract Financing Act of Montana", he shall petition the district court of the county in which said real estate or any part thereof may be situated to fix the amount of such attorney's fee, and a copy of such petition shall be served upon all parties having or claiming an interest of record in the property to be sold or such of them as may be found within the state, which copy of said petition must be served at least 10 days before the day fixed for hearing, and notice of the time and place of such hearing shall be served at the same time as the copy of said petition is served. Such petition shall be acted upon by the district court before the notice of sale by publication or posting, as hereinbefore provided for, shall be given.

History: En. Sec. 3, Ch. 165, L. 1917; re-en. Sec. 9473, R.C.M. 1921; re-en. Sec. 9473, R.C.M. 1935; amd. Sec. 20, Ch. 177, L. 1963; R.C.M. 1947, 93-6007.

71-1-235. Instruments — negotiability and remedies. Nothing in this part shall be deemed to affect the negotiability of an instrument, and nothing in this part shall be deemed to limit remedies otherwise available to the purchaser of a promissory note secured by a mortgage unless such purchaser at the time of purchase had notice that the note was so secured.

History: En. 93-6010 by Sec. 11-168, Ch. 264, L. 1963; R.C.M. 1947, 93-6010.

Part 3

Small Tract Financing

71-1-301. Short title. This part may be cited as the "Small Tract Financing Act of Montana".

History: En. Sec. 1, Ch. 177, L. 1963; R.C.M. 1947, 52-401.

71-1-302. Policy. Because the financing of homes and business expansion is essential to the development of the state of Montana and because such financing, usually involving areas of real estate of not more than 15 acres, has been restricted by the laws relating to mortgages of real property and because more such financing of homes and business expansion is available if the parties can use security instruments and procedures not subject to all the provisions of the mortgage laws, it is hereby declared to be the public policy of the state of Montana to permit the use of trust indentures for estates in real property of not more than 15 acres as hereinafter provided.

History: En. Sec. 2, Ch. 177, L. 1963; amd. Sec. 1, Ch. 337, L. 1974; R.C.M. 1947, 52-402.

71-1-303. Definitions. As used in this part, unless the context requires otherwise the following definitions apply:

(1) "Beneficiary" means the person named or otherwise designated in a trust indenture as the person for whose benefit a trust indenture is given or his successor in interest, and who shall not be the trustee.

(2) "Fifteen acres" means 15 acres of land.

(3) "Grantor" means the person conveying real property by a trust indenture as security for the performance of an obligation.

(4) "Trust indenture" means an indenture executed in conformity with this part and conveying real property to a trustee in trust to secure the performance of an obligation of the grantor or other person named in the indenture to a beneficiary.

(5) "Trustee" means a person to whom the legal title to real property is conveyed by a trust indenture or his successor in interest.

History: En. Sec. 3, Ch. 177, L. 1963; amd. Sec. 2, Ch. 337, L. 1974; R.C.M. 1947, 52-403(part).

71-1-304. Trust indentures authorized — power of sale for breach in trustee. (1) Transfers in trust of any interest in real property of an area not exceeding 15 acres may be made to secure the performance of an obligation of a grantor or any other person named in the indenture to a beneficiary provided that it shall be unlawful to substitute a trust indenture for any mortgage in existence on March 5, 1963.

(2) Where any transfer in trust of any interest in real property is hereafter made to secure the performance of such an obligation, a power of sale is hereby conferred upon the trustee to be exercised after a breach of the obligation for which such transfer is security.

(3) A trust indenture executed in conformity with this part may be foreclosed by advertisement and sale in the manner hereinafter provided or, at the option of the beneficiary, by judicial procedure as provided by law for the foreclosure of mortgages on real property. The power of sale may be exercised by the trustee without express provision therefor in the trust indenture.

(4) Where the trust indenture states that the real property involved does not exceed 15 acres, such statement shall be binding upon all parties and conclusive as to compliance with the provisions of this part relative to the power to make a transfer, trust, and power of sale.

History: (1) thru (3)En. Sec. 4, Ch. 177, L. 1963; amd. Sec. 3, Ch. 337, L. 1974; Sec. 52-404, R.C.M. 1947; (4)En. Sec. 3, Ch. 177, L. 1963; amd. Sec. 2, Ch. 337, L. 1974; Sec. 52-403, R.C.M. 1947; R.C.M. 1947, 52-403(part), 52-404.

71-1-305. Trust indenture considered to be mortgage on real property. A trust indenture is deemed to be a mortgage on real property and is subject to all laws relating to mortgages on real property except to the extent that such laws are inconsistent with the provisions of this part, in which event the provisions of this part shall control. For the purpose of applying the mortgage laws, the grantor in a trust indenture is deemed the mortgagor and the beneficiary is deemed the mortgagee.

History: En. Sec. 17, Ch. 177, L. 1963; R.C.M. 1947, 52-417.

71-1-306. Qualifications of trustee — successor trustee. (1) The trustee of a trust indenture under this part shall be:

(a) an attorney who is licensed to practice law in Montana;

(b) a bank, trust company, or savings and loan association authorized to do business in Montana under the laws of Montana or the United States; or

(c) a title insurance or abstract company authorized to do business in Montana under the laws of Montana.

(2) The beneficiary may appoint a successor trustee at any time by filing for record, in the office of the clerk and recorder of each county in which

the trust property or some part thereof is situated, a substitution of trustee. The substitution shall identify the trust indenture by stating the names of the original parties thereto and the date of recordation and the book and page where the same is recorded, shall state the name and mailing address of the new trustee, and shall be executed and acknowledged by all of the beneficiaries designated in the trust indenture or their successors in interest. From the time the substitution is filed for record, the new trustee shall be vested with all the power, duties, authority, and title of the trustee named in the trust indenture and of any successor trustee.

History: **En. Sec. 5, Ch. 177, L. 1963; R.C.M. 1947, 52-405.**

71-1-307. Reconveyance upon performance — liability for failure to reconvey. Upon performance of the obligation secured by the trust indenture, the trustee, upon written request of the beneficiary, shall reconvey the interest in real property described in the trust indenture to the grantor. In the event the obligation is performed and the beneficiary refuses to request reconveyance or the trustee refuses to reconvey the property, the beneficiary or trustee so refusing shall be liable as provided by law in the case of refusal to execute a discharge or satisfaction of a mortgage on real property.

History: **En. Sec. 6, Ch. 177, L. 1963; R.C.M. 1947, 52-406.**

71-1-308 through 71-1-310 reserved.

71-1-311. Time for foreclosure same as mortgage. The foreclosure of a trust indenture by advertisement and sale or by judicial procedure shall be commenced within the time, including extensions, provided by law for the foreclosure of a mortgage on real property.

History: **En. Sec. 7, Ch. 177, L. 1963; R.C.M. 1947, 52-407.**

71-1-312. Discontinuance of foreclosure proceedings when entire amount of default paid. (1) Whenever all or a portion of any obligation secured by a trust indenture has, prior to the maturity date fixed in such obligation, become due or been declared due by reason of a breach or default in the performance of any obligation secured by the trust indenture, including a default in the payment of interest or of any installment of principal or by reason of failure of the grantor to pay, in accordance with the terms of such trust indenture, taxes, assessments, premiums for insurance, or advances made by the beneficiary in accordance with the terms of such obligation or of such trust indenture, the grantor or his successor in interest in the trust property or any part thereof or any other person having a subordinate lien or encumbrance of record thereon or any beneficiary under a subordinate trust indenture, at any time prior to the time fixed by the trustee for the trustee's sale if the power of sale is to be exercised, may pay to the beneficiary or his successor in interest the entire amount then due under the terms of such trust indenture and the obligation secured thereby (including costs and expenses actually incurred and reasonable trustee's and attorney's fees) other than such portion of the principal as would not then be due had no default occurred and thereby cure the default theretofore existing.

(2) Thereupon all proceedings theretofore had or instituted to foreclose the trust indenture shall be canceled and the obligation and the trust indenture shall be reinstated and shall be and remain in force and effect the same as if no such acceleration had occurred.

(3) If the default is cured and the obligation and the trust indenture reinstated in the manner hereinabove provided, the beneficiary or his assignee shall, on demand of any person having an interest in the trust property, execute, acknowledge, and deliver to him a request that the trustee execute, acknowledge, and deliver a cancellation of the recorded notice of sale under such trust indenture.

(4) Any beneficiary under a trust indenture or his assignee who, for a period of 30 days after such demand, refuses to request the trustee to execute, acknowledge, and deliver such cancellation shall be liable to the person entitled to such request for all damages resulting from such refusal.

(5) A cancellation of a recorded notice of sale shall, when executed and acknowledged, be entitled to be recorded and shall be sufficient if it sets forth a reference to the trust indenture and the book and page where the same is recorded, a reference to the notice of sale and to the book and page where the same is recorded, and a statement that such notice of sale is canceled.

History: **En. Sec. 12, Ch. 177, L. 1963; R.C.M. 1947, 52-412.**

71-1-313. Conditions for foreclosure by advertisement and sale. The trustee may foreclose a trust indenture by advertisement and sale under this part if:

(1) the trust indenture, any assignments of the trust indenture by the trustee or the beneficiary, and any appointment of a successor trustee are recorded in the office of the clerk and recorder of each county in which the property described in the trust indenture or some part thereof is situated;

(2) there is a default by the grantor or other person owing an obligation or by their successors in interest, the performance of which is secured by the trust indenture, with respect to any provision in the indenture which authorizes sale in the event of default of such provision; and

(3) the trustee or beneficiary shall have filed for record in the office of the clerk and recorder in each county where the property described in the indenture or some part thereof is situated a notice of sale, duly executed and acknowledged by such trustee or beneficiary, setting forth:

(a) the names of the grantor, trustee, and beneficiary in the trust indenture and the name of any successor trustee;

(b) a description of the property covered by the trust indenture;

(c) the book and page of the mortgage records where the trust indenture is recorded;

(d) the default for which the foreclosure is made;

(e) the sum owing on the obligation secured by the trust indenture;

(f) the trustee's or beneficiary's election to sell the property to satisfy the obligation;

(g) the date of sale, which shall not be less than 120 days subsequent to the date on which the notice of sale is filed for record, and the time of sale, which shall be between the hours of 9 a.m. and 4 p.m., mountain standard time;

(h) the place of sale which shall be at the courthouse of the county or one of the counties where the property is situated or at the location of the property or at the trustee's usual place of business if within the county or one of the counties where the property is situated.

History: En. Sec. 8, Ch. 177, L. 1963; R.C.M. 1947, 52-408(1).

71-1-314. Requests for copies of notice of sale. At any time subsequent to the recordation of a trust indenture and prior to the recordation of notice of sale under the indenture, any person desiring a copy of any notice of sale under a trust indenture as provided in 71-1-315(1) may cause to be filed for record in the office of the county clerk and recorder of the county or counties in which any part or parcel of the real property is situated, a duly acknowledged request for a copy of any notice of sale, showing service upon the trustee. The request shall contain the name and address of the person requesting a copy of the notice and shall identify the trust indenture by stating the names of the parties to the indenture, the date of recordation of the indenture, and the book and page where the indenture is recorded. The county clerk and recorder shall immediately make a cross-reference of the request to the trust indenture either on the margin of the page where the trust indenture is recorded or in some other suitable place. No request, statement, or notation placed on the record pursuant to this section shall affect title to the property or be deemed notice to any person that any person so recording the request has any right, title, interest in, lien, or charge upon the property referred to in the trust indenture.

History: En. Sec. 15, Ch. 177, L. 1963; R.C.M. 1947, 52-415.

71-1-315. Notice — sale — payment. A trust deed may be foreclosed by advertisement and sale in the manner hereinafter provided:

(1) The trustee shall give notice of the sale in the following manner:

(a) At least 120 days before the date fixed for the trustee's sale, a copy of the recorded notice of sale shall be mailed by registered or certified mail to:

(i) the grantor, at the grantor's address as set forth in the trust indenture or (in the event no address of the grantor is set forth in the trust indenture) at the grantor's last known address;

(ii) each person designated in the trust indenture to receive notice of sale whose address is set forth therein, at such address;

(iii) each person who has filed for record a request for a copy of notice of sale within the time and in the manner hereinafter provided, at the address of such person as set forth in such request;

(iv) any successor in interest to the grantor whose interest and address appear of record at the filing date and time of the notice of sale, at such address;

(v) any person having a lien or interest subsequent to the interest of the trustee and whose lien or interest and address appear of record at the filing date and time of the notice of sale, at such address.

(b) At least 20 days before the date fixed for the trustee's sale, a copy of the recorded notice of sale shall be posted in some conspicuous place on the property to be sold. Upon request of the trustee, the notice of sale shall be posted by a sheriff or constable of the county wherein the property to be sold is located.

(c) A copy of the notice of sale shall be published in a newspaper of general circulation published in any county in which the property or some part thereof is situated, at least once each week for 3 successive weeks. If there is no such newspaper, then copies of the notice of sale shall be posted in at least three public places in each county in which the property or some part thereof is situated. The posting or the last publication shall be made at least 20 days before the date fixed for the trustee's sale.

(2) On or before the date of sale, there shall be filed for record in the office of the clerk and recorder of each county where the property or some part thereof is situated, affidavits of mailing, posting, and publication showing compliance with the requirements of this section.

(3) On the date and at the time and place designated in the notice of sale, the trustee or his attorney shall sell the property at public auction to the highest bidder. The property may be sold in one parcel or in separate parcels, and any person, including the beneficiary under the trust indenture but excluding the trustee, may bid at the sale. The person making the sale may, for any cause he deems expedient, postpone the sale for a period not exceeding 15 days by public proclamation at the time and place fixed in the notice of sale. No other notice of the postponed sale need be given.

(4) The purchaser at the sale shall pay the price bid in cash, and upon receipt of payment, the trustee shall execute and deliver a trustee's deed to the purchaser. In the event the purchaser refuses to pay the purchase price, the person conducting the sale shall have the right to resell the property at any time to the highest bidder. The party refusing to pay shall be liable for any loss occasioned thereby, and the person making the sale may also, in his discretion, thereafter reject any other bid of such person.

History: Ap. p. Sec. 8, Ch. 177, L. 1963; Sec. 52-408, R.C.M. 1947; (1) thru (4)En. Sec. 9, Ch. 177, L. 1963; amd. Sec. 1, Ch. 53, L. 1977; Sec. 52-409, R.C.M. 1947; R.C.M. 1947, 52-408(2), 52-409.

71-1-316. Disposition of proceeds of sale. The trustee shall apply the proceeds of the trustee's sale as follows:

(1) to the costs and expenses of exercising the power of sale and of the sale, including reasonable trustee's fees and attorney's fees;

(2) to the obligation secured by the trust indenture;

(3) the surplus, if any, to the person or persons legally entitled thereto, or the trustee, in his discretion, may deposit such surplus with the clerk and recorder of the county in which the sale took place. Upon depositing such surplus, the trustee shall be discharged from all further responsibility therefor and the clerk and recorder shall deposit the same with the county treasurer subject to the order of the district court of such county.

History: En. Sec. 13, Ch. 177, L. 1963; R.C.M. 1947, 52-413.

71-1-317. Deficiency judgment not allowed. When a trust indenture executed in conformity with this part is foreclosed by advertisement and sale, no other or further action, suit, or proceedings shall be taken or judgment entered for any deficiency against the grantor or his surety, guarantor, or successor in interest, if any, on the note, bond, or other obligation secured by the trust indenture or against any other person obligated on such note, bond, or other obligation.

History: En. Sec. 14, Ch. 177, L. 1963; R.C.M. 1947, 52-414.

71-1-318. Trustee's deed. (1) The trustee's deed to the purchaser at the trustee's sale may contain, in addition to a description of the property conveyed, recitals of compliance with the requirements of this part relating to the exercise of the power of sale and the sale, including recitals of the facts concerning the default, the notice given, the conduct of the sale, and the receipt of the purchase money from the purchaser.

(2) When the trustee's deed is recorded in the deed records of the county or counties where the property described in the deed is situated, the recitals contained in the deed and in the affidavits required under 71-1-315(2) shall be prima facie evidence in any court of the truth of the matters set forth therein, except that the same shall be conclusive evidence in favor of subsequent bona fide purchasers and encumbrancers for value and without notice.

(3) The trustee's deed shall operate to convey to the purchaser, without right of redemption, the trustee's title and all right, title, interest, and claim of the grantor and his successors in interest and of all persons claiming by, through, or under them in and to the property sold, including all such right, title, interest, and claim in and to such property acquired by the grantor or his successors in interest subsequent to the execution of the trust indenture.

History: **En. Sec. 10, Ch. 177, L. 1963; R.C.M. 1947, 52-410.**

71-1-319. Possession. The purchaser at the trustee's sale shall be entitled to possession of the property on the 10th day following the sale, and any persons remaining in possession after that date under any interest, except one prior to the trust indenture, shall be deemed to be tenants at will.

History: **En. Sec. 11, Ch. 177, L. 1963; R.C.M. 1947, 52-411.**

71-1-320. Trustees' fees and attorneys' fees. Reasonable trustees' fees and attorneys' fees to be charged to the grantor in the event of foreclosure by advertisement and sale shall not exceed, in the aggregate, 5% of the amount due on the obligation, both principal and interest, at the time of the trustee's sale. If prior to the trustee's sale the obligation and the trust indenture shall be reinstated in accordance with provisions of 71-1-312, the reasonable trustees' fees and attorneys' fees to be charged to the grantor shall not exceed $150. In no event shall trustees' fees and attorneys' fees be charged to a grantor on account of any services rendered prior to the commencement of foreclosure.

History: **En. Sec. 16, Ch. 177, L. 1963; R.C.M. 1947, 52-416.**

71-1-321. Deeds of trust and trust deeds not invalidated. The Small Tract Financing Act of Montana does not invalidate or preclude the use in this state of instruments, sometimes denominated deeds of trust, trust deeds, or trust indentures, which are not executed in conformity with this part, but in which a conveyance for security purposes is made to a trustee or trustees for the benefit of one or more lenders. Such instruments are considered to be mortgages and are subject to all laws relating to mortgages on real property. Every such instrument, recorded as prescribed by law, from the time it is filed for record is constructive notice of its contents to subsequent purchasers and encumbrancers.

History: **En. Sec. 1, Ch. 362, L. 1979.**

CHAPTER 2

PLEDGES

Part 1 — Pledges in General

Section
71-2-101. Definitions.
71-2-102. When contract considered a pledge.
71-2-103. Delivery required.
71-2-104. Pledgee or pledge holder for reward.
71-2-105. Gratuitous pledge holder.
71-2-106. Obligations of pledge holder.
71-2-107. Property pledged to extent of lien.
71-2-108. When pledge may not be withdrawn.
71-2-109. When real owner cannot defeat pledge.
71-2-110. Debtor's misrepresentation of value of pledge.

Part 1

Pledges in General

71-2-101. Definitions. (1) "Pledge" is a deposit of personal property by way of security for the performance of another's act.

(2) A pledgor and pledgee may agree upon a third person with whom to deposit the property pledged, who, if he accepts the deposit, is called a "pledge holder".

History: (1)En. Sec. 3890, Civ. C. 1895; re-en. Sec. 5774, Rev. C. 1907; re-en. Sec. 8292, R.C.M. 1921; Cal. Civ. C. Sec. 2986; Field Civ. C. Sec. 1647; re-en. Sec. 8292, R.C.M. 1935; Sec. 65-101, R.C.M. 1947; (2)En. Sec. 3897, Civ. C. 1895; re-en. Sec. 5781, Rev. C. 1907; re-en. Sec. 8299, R.C.M. 1921; Cal. Civ. C. Sec. 2993; Field Civ. C. Sec. 1654; re-en. Sec. 8299, R.C.M. 1935; Sec. 65-108, R.C.M. 1947; R.C.M. 1947, 65-101, 65-108.

71-2-102. When contract considered a pledge. Every contract by which the possession of personal property is transferred as security only is to be deemed a pledge.

History: En. Sec. 3891, Civ. C. 1895; re-en. Sec. 5775, Rev. C. 1907; re-en. Sec. 8293, R.C.M. 1921; Cal. Civ. C. Sec. 2987; Field Civ. C. Sec. 1648; re-en. Sec. 8293, R.C.M. 1935; R.C.M. 1947, 65-102.

71-2-103. Delivery required. The lien of a pledge is dependent on possession, and no pledge is valid until the property pledged is delivered to the pledgee or to a pledge holder, as hereafter prescribed.

History: En. Sec. 3892, Civ. C. 1895; re-en. Sec. 5776, Rev. C. 1907; re-en. Sec. 8294, R.C.M. 1921; Cal. Civ. C. Sec. 2988; Field Civ. C. Sec. 1649; re-en. Sec. 8294, R.C.M. 1935; R.C.M. 1947, 65-103.

71-2-104. Pledgee or pledge holder for reward. A pledgee or a pledge holder for reward assumes the duties and liabilities of a depositary for reward.

History: En. Sec. 3901, Civ. C. 1895; re-en. Sec. 5785, Rev. C. 1907; re-en. Sec. 8303, R.C.M. 1921; Cal. Civ. C. Sec. 2997; Field Civ. C. Sec. 1658; re-en. Sec. 8303, R.C.M. 1935; R.C.M. 1947, 65-112.

71-2-105. Gratuitous pledge holder. A gratuitous pledge holder assumes the duties and liabilities of a gratuitous depositary.

History: En. Sec. 3902, Civ. C. 1895; re-en. Sec. 5786, Rev. C. 1907; re-en. Sec. 8304, R.C.M. 1921; Cal. Civ. C. Sec. 2998; Field Civ. C. Sec. 1659; re-en. Sec. 8304, R.C.M. 1935; R.C.M. 1947, 65-113.

71-2-106. Obligations of pledge holder. (1) A pledge holder for reward cannot exonerate himself from his undertaking; and a gratuitous pledge holder can do so only by giving reasonable notice to the pledgor and pledgee to appoint a new pledge holder and, in case of their failure to agree, by depositing the property pledged with some impartial person, who will then be entitled to a reasonable compensation for his care of the same.

(2) A pledge holder must enforce all the rights of the pledgee unless authorized by him to waive them.

History: (1)En. Sec. 3899, Civ. C. 1895; re-en. Sec. 5783, Rev. C. 1907; re-en. Sec. 8301, R.C.M. 1921; Cal. Civ. C. Sec. 2995; Field Civ. C. Sec. 1656; re-en. Sec. 8301, R.C.M. 1935; Sec. 65-110, R.C.M. 1947; (2)En. Sec. 3900, Civ. C. 1895; re-en. Sec. 5784, Rev. C. 1907; re-en. Sec. 8302, R.C.M. 1921; Cal. Civ. C. Sec. 2996; Field Civ. C. Sec. 1657; re-en. Sec. 8302, R.C.M. 1935; Sec. 65-111, R.C.M. 1947; R.C.M. 1947, 65-110, 65-111.

71-2-107. Property pledged to extent of lien. One who has a lien upon property may pledge it to the extent of his lien.

History: En. Sec. 3894, Civ. C. 1895; re-en. Sec. 5778, Rev. C. 1907; re-en. Sec. 8296, R.C.M. 1921; Cal. Civ. C. Sec. 2990; Field Civ. C. Sec. 1651; re-en. Sec. 8296, R.C.M. 1935; R.C.M. 1947, 65-105.

71-2-108. When pledge may not be withdrawn. One who pledges property as security for the obligation of another cannot withdraw the property pledged otherwise than as a pledgor for himself might, and if he receives from the debtor a consideration for the pledge, he cannot withdraw it without his consent.

History: En. Sec. 3898, Civ. C. 1895; re-en. Sec. 5782, Rev. C. 1907; re-en. Sec. 8300, R.C.M. 1921; Cal. Civ. C. Sec. 2994; Field Civ. C. Sec. 1655; re-en. Sec. 8300, R.C.M. 1935; R.C.M. 1947, 65-109.

71-2-109. When real owner cannot defeat pledge. One who has allowed another to assume the apparent ownership of property for the purpose of making any transfer of it cannot set up his own title to defeat a pledge of the property made by the other to a pledgee who received the property in good faith in the ordinary course of business and for value.

History: En. Sec. 3895, Civ. C. 1895; re-en. Sec. 5779, Rev. C. 1907; re-en. Sec. 8297, R.C.M. 1921; Cal. Civ. C. Sec. 2991; Field Civ. C. Sec. 1652; re-en. Sec. 8297, R.C.M. 1935; R.C.M. 1947, 65-106.

71-2-110. Debtor's misrepresentation of value of pledge. Where a debtor has obtained credit or an extension of time by a fraudulent misrepresentation of the value of property pledged by or for him, the creditor may demand a further pledge to correspond with the value represented and in default thereof may recover his debt immediately, though it be not actually due.

History: En. Sec. 3903, Civ. C. 1895; re-en. Sec. 5787, Rev. C. 1907; re-en. Sec. 8305, R.C.M. 1921; Cal. Civ. C. Sec. 2999; Field Civ. C. Sec. 1660; re-en. Sec. 8305, R.C.M. 1935; R.C.M. 1947, 65-114.

CHAPTER 3

LIENS

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Section

71-3-101. Definitions.
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Part 1

General Provisions

71-3-101. Definitions. (1) A "lien" is a charge imposed in some mode other than by a transfer in trust upon specific property by which it is made security for the performance of an act. Liens are either general or special.

(2) A "general lien" is one which the holder thereof is entitled to enforce as a security for the performance of all the obligations or all of a particular class of obligations which exist in his favor against the owner of the property.

(3) A "special lien" is one which the holder thereof can enforce only as security for the performance of a particular act or obligation and of such obligations as may be incidental thereto.

History: (1)Ap. p. Sec. 3730, Civ. C. 1895; re-en. Sec. 5704, Rev. C. 1907; re-en. Sec. 8219, R.C.M. 1921; Cal. Civ. C. Sec. 2872; Based on Field Civ. C. Sec. 1582; re-en. Sec. 8219, R.C.M. 1935; Sec. 45-101, R.C.M. 1947; Ap. p. Sec. 3731, Civ. C. 1895; re-en. Sec. 5705, Rev. C. 1907; re-en. Sec. 8220, R.C.M. 1921; Cal. Civ. C. Sec. 2873; Field Civ. C. Sec. 1583; re-en. Sec. 8220, R.C.M. 1935; Sec. 45-102, R.C.M. 1947; (2)En. Sec. 3732, Civ. C. 1895; re-en. Sec. 5706, Rev. C. 1907; re-en. Sec. 8221, R.C.M. 1921; Cal. Civ. C. Sec. 2874; Field Civ. C. Sec. 1584; re-en. Sec. 8221, R.C.M. 1935; Sec. 45-103, R.C.M. 1947; (3)En. Sec. 3733, Civ. C. 1895; re-en. Sec. 5707, Rev. C. 1907; re-en. Sec. 8222, R.C.M. 1921; Cal. Civ. C. Sec. 2875; Field Civ. C. Sec. 1585; re-en. Sec. 8222, R.C.M. 1935; Sec. 45-104, R.C.M. 1947; R.C.M. 1947, 45-101, 45-102, 45-103, 45-104.

71-3-102. How liens created. A lien is created:

(1) by contract of the parties; or

(2) by operation of law.

History: En. Sec. 3740, Civ. C. 1895; re-en. Sec. 5710, Rev. C. 1907; re-en. Sec. 8225, R.C.M. 1921; Cal. Civ. C. Sec. 2881; Field Civ. C. Sec. 1587; re-en. Sec. 8225, R.C.M. 1935; R.C.M. 1947, 45-107.

71-3-103. No lien for claim not due. No lien arises by mere operation of law until the time at which the act to be secured thereby ought to be performed.

History: En. Sec. 3741, Civ. C. 1895; re-en. Sec. 5711, Rev. C. 1907; re-en. Sec. 8226, R.C.M. 1921; Cal. Civ. C. Sec. 2882; Field Civ. C. Sec. 1588; re-en. Sec. 8226, R.C.M. 1935; R.C.M. 1947, 45-108.

71-3-104. Lien by agreement. A lien may be created by contract, to take immediate effect, as security for the performance of obligations not then in existence.

History: En. Sec. 3743, Civ. C. 1895; re-en. Sec. 5713, Rev. C. 1907; re-en. Sec. 8228, R.C.M. 1921; Cal. Civ. C. Sec. 2884; Field Civ. C. Sec. 1590; re-en. Sec. 8228, R.C.M. 1935; R.C.M. 1947, 45-110.

71-3-105. Lien on future interest. An agreement may be made to create a lien upon property not yet acquired by the party agreeing to give the lien or not yet in existence. Except as otherwise provided by the Uniform Commercial Code, in such case the lien agreed for attaches from the time when the party agreeing to give it acquires an interest in the thing, to the extent of such interest.

History: En. Sec. 3742, Civ. C. 1895; re-en. Sec. 5712, Rev. C. 1907; re-en. Sec. 8227, R.C.M. 1921; Cal. Civ. C. Sec. 2883; Field Civ. C. Sec. 1589; re-en. Sec. 8227, R.C.M. 1935; amd. Sec. 11-118, Ch. 264, L. 1963; R.C.M. 1947, 45-109.

71-3-106. Extent of lien. The existence of a lien upon property does not of itself entitle the person in whose favor it exists to a lien upon the same property for the performance of any other obligation than that which the lien originally secured.

History: En. Sec. 3753, Civ. C. 1895; re-en. Sec. 5717, Rev. C. 1907; re-en. Sec. 8232, R.C.M. 1921; Cal. Civ. C. Sec. 2891; Field Civ. C. Sec. 1594; re-en. Sec. 8232, R.C.M. 1935; R.C.M. 1947, 45-114.

71-3-107. Prior liens. Where the holder of a special lien is compelled to satisfy a prior lien for his own protection, he may enforce payment of the amount so paid by him as a part of the claim for which his own lien exists.

History: En. Sec. 3734, Civ. C. 1895; re-en. Sec. 5708, Rev. C. 1907; re-en. Sec. 8223, R.C.M. 1921; Cal. Civ. C. Sec. 2876; re-en. Sec. 8223, R.c.M. 1935; R.C.M. 1947, 45-105.

71-3-108. Lien or contract for lien transfers no title. Notwithstanding an agreement to the contrary, a lien or a contract for a lien transfers no title to the property subject to the lien.

History: En. Sec. 3750, Civ. C. 1895; re-en. Sec. 5714, Rev. C. 1907; re-en. Sec. 8229, R.C.M. 1921; Cal. Civ. C. Sec. 2888; Field Civ. C. Sec. 1591; re-en. Sec. 8229, R.C.M. 1935; R.C.M. 1947, 45-111.

71-3-109. Certain contracts void. Except as otherwise provided by the Uniform Commercial Code, all contracts for the forfeiture of property subject to a lien in satisfaction of the obligation secured thereby and all contracts in restraint of the right of redemption from a lien are void.

History: En. Sec. 3751, Civ. C. 1895; re-en. Sec. 5715, Rev. C. 1907; re-en. Sec. 8230, R.C.M. 1921; Cal. Civ. C. Sec. 2889; Based on Field Civ. C. Sec. 1592; re-en. Sec. 8230, R.C.M. 1935; amd. Sec. 11-119, Ch. 264, L. 1963; R.C.M. 1947, 45-112.

71-3-110. Enforcement of obligation by creditor. The existence of a lien, as security for the performance of an obligation, does not affect the right of the creditor to enforce the obligation without regard to the lien.

History: En. Sec. 3754, Civ. C. 1895; re-en. Sec. 5718, Rev. C. 1907; re-en. Sec. 8233, R.C.M. 1921; Field Civ. C. Sec. 1595; re-en. Sec. 8233, R.C.M. 1935; R.C.M. 1947, 45-115.

71-3-111. Creation of lien not a personal obligation. The creation of a lien does not itself imply that any person is bound to perform the act for which the lien is a security.

History: En. Sec. 3752, Civ. C. 1895; re-en. Sec. 5716, Rev. C. 1907; re-en. Sec. 8231, R.C.M. 1921; Cal. Civ. C. Sec. 2890; Field Civ. C. Sec. 1593; re-en. Sec. 8231, R.C.M. 1935; R.C.M. 1947, 45-113.

71-3-112. Holder of lien not entitled to compensation. Except as otherwise provided by the Uniform Commercial Code, one who holds property by virtue of a lien thereon is not entitled to compensation from the owner thereof for any trouble or expense which he incurs respecting it, except to the same extent as a borrower under 70-7-110 and 70-7-111.

History: En. Sec. 3755, Civ. C. 1895; re-en. Sec. 5719, Rev. C. 1907; re-en. Sec. 8234, R.C.M. 1921; Cal. Civ. C. Sec. 2892; Field Civ. C. Sec. 1596; re-en. Sec. 8234, R.C.M. 1935; amd. Sec. 11-120, Ch. 264, L. 1963; R.C.M. 1947, 45-116.

71-3-113. Priority of liens. Other things being equal, different liens upon the same property have priority according to the time of their creation.

History: En. Sec. 3770, Civ. C. 1895; re-en. Sec. 5720, Rev. C. 1907; re-en. Sec. 8235, R.C.M. 1921; Cal. Civ. C. Sec. 2897; Based on Field Civ. C. Sec. 1597; re-en. Sec. 8235, R.C.M. 1935; R.C.M. 1947, 45-201.

71-3-114. Priority of purchase money mortgage. Except as otherwise provided by law, a mortgage given for the price of real property at the time of its conveyance has priority over all other liens created against the purchaser, subject to the operation of the recording laws.

History: En. Sec. 3771, Civ. C. 1895; re-en. Sec. 5721, Rev. C. 1907; re-en. Sec. 8236, R.C.M. 1921; Cal. Civ. C. Sec. 2898; re-en. Sec. 8236, R.C.M. 1935; R.C.M. 1947, 45-202.

71-3-115. Order of resort to different funds. Where one has a lien upon several things and other persons have subordinate liens upon or interests in some but not all of the same things, the person having the prior lien, if he can do so without risk of loss to himself or of injustice to other persons, must resort to the property in the following order, on the demand of any party interested:

(1) to the things upon which he has an exclusive lien;

(2) to the things which are subject to the fewest subordinate liens;

(3) in like manner inversely to the number of subordinate liens upon the same thing; and

(4) when several things are within one of the foregoing classes and subject to the same number of liens, resort must be had:

(a) first, to the things which have not been transferred since the prior lien was created;

(b) second, to the things which have been so transferred without a valuable consideration; and

(c) third, to the things which have been so transferred for a valuable consideration in the inverse order of the transfer.

History: En. Sec. 3772, Civ. C. 1895; re-en. Sec. 5722, Rev. C. 1907; re-en. Sec. 8237, R.C.M. 1921; Cal. Civ. C. Sec. 2899; Based on Field Civ. C. Sec. 1599; re-en. Sec. 8237, R.C.M. 1935; R.C.M. 1947, 45-203.

71-3-116. Redemption. Redemption from a lien is made by performing or offering to perform the act for the performance of which it is a security and paying or offering to pay the damages, if any, to which the holder of the lien is entitled for delay.

History: En. Sec. 3782, Civ. C. 1895; re-en. Sec. 5725, Rev. C. 1907; re-en. Sec. 8240, R.C.M. 1921; Cal. Civ. C. Sec. 2905; Field Civ. C. Sec. 1602; re-en. Sec. 8240, R.C.M. 1935; R.C.M. 1947, 45-303.

71-3-117. Right to redeem. Except as otherwise provided by the Uniform Commercial Code, every person having an interest in property subject to a lien has a right to redeem it from the lien at any time after the claim is due and before his right of redemption is foreclosed.

History: En. Sec. 3780, Civ. C. 1895; re-en. Sec. 5723, Rev. C. 1907; re-en. Sec. 8238, R.C.M. 1921; Cal. Civ. C. Sec. 2903; re-en. Sec. 8238, R.C.M. 1935; amd. Sec. 11-121, Ch. 264, L. 1963; R.C.M. 1947, 45-301.

71-3-118. Rights of inferior lienor. One who has a lien inferior to another upon the same property has a right to:

(1) redeem the property in the same manner as its owner might from the superior lien; and

(2) be subrogated to all the benefits of the superior lien, when necessary for the protection of his interests, upon satisfying the claim secured thereby.

History: En. Sec. 3781, Civ. C. 1895; re-en. Sec. 5724, Rev. C. 1907; re-en. Sec. 8239, R.C.M. 1921; Cal. Civ. C. Sec. 2904; Field Civ. C. Sec. 1601; re-en. Sec. 8239, R.C.M. 1935; R.C.M. 1947, 45-302.

71-3-119. Lien accessory to performance. A lien is to be accessory to the act for the performance of which it is a security, whether any person is bound for such performance or not, and is extinguishable in like manner with any other accessory obligation.

History: En. Sec. 3790, Civ. C. 1895; re-en. Sec. 5726, Rev. C. 1907; re-en. Sec. 8241, R.C.M. 1921; Cal. Civ. C. Sec. 2909; re-en. Sec. 8241, R.C.M. 1935; R.C.M. 1947, 45-304.

71-3-120. Effect of partial performance. The partial performance of an act secured by a lien does not extinguish the lien upon any part of the property subject thereto, even if it is divisible.

History: En. Sec. 3793, Civ. C. 1895; re-en. Sec. 5729, Rev. C. 1907; re-en. Sec. 8244, R.C.M. 1921; Cal. Civ. C. Sec. 2912; Field Civ. C. Sec. 1606; re-en. Sec. 8244, R.C.M. 1935; R.C.M. 1947, 45-307.

71-3-121. Extinction by sale or wrongful conversion. The sale of any property on which there is a lien in satisfaction of the claim secured thereby or, in case of personal property, its wrongful conversion by the person holding the lien extinguishes the lien thereon.

History: En. Sec. 3791, Civ. C. 1895; re-en. Sec. 5727, Rev. C. 1907; re-en. Sec. 8242, R.C.M. 1921; Cal. Civ. C. Sec. 2910; Field Civ. C. Sec. 1604; re-en. Sec. 8242, R.C.M. 1935; R.C.M. 1947, 45-305.

71-3-122. Lien extinguished by statute of limitations. A lien is extinguished by the lapse of the time within which, under the provisions of Title 27, an action can be brought upon the principal obligation.

History: En. Sec. 3792, Civ. C. 1895; re-en. Sec. 5728, Rev. C. 1907; re-en. Sec. 8243, R.C.M. 1921; Cal. Civ. C. Sec. 2911; Field Civ. C. Sec. 1605; re-en. Sec. 8243, R.C.M. 1935; R.C.M. 1947, 45-306.

71-3-123. When restoration extinguishes lien. Except as otherwise provided by the Uniform Commercial Code, the voluntary restoration of property to its owner by the holder of a lien thereon, dependent upon possession, extinguishes the lien as to such property, unless otherwise agreed by the parties, and extinguishes it, notwithstanding any such agreement, as to creditors of the owner and persons subsequently acquiring a title to the property or a lien thereon in good faith and for a good consideration.

History: En. Sec. 3794, Civ. C. 1895; re-en. Sec. 5730, Rev. C. 1907; re-en. Sec. 8245, R.C.M. 1921; Cal. Civ. C. Sec. 2913; Based on Field Civ. C. Sec. 1607; re-en. Sec. 8246, R.C.M. 1935; amd. Sec. 11-122, Ch. 264, L. 1963; R.C.M. 1947, 45-308.

71-3-124. Filing costs and attorneys' fees to be recovered on foreclosure of liens. In an action to foreclose any of the liens provided for by parts 3, 4, 5, 6, 8, or 10 of this chapter, the court must allow as costs the money paid for filing and recording the lien and a reasonable attorney's fee in the district and supreme courts, and such costs and attorneys' fees must be allowed to each claimant whose lien is established, and such reasonable attorneys' fees must be allowed to the defendant against whose property a lien is claimed, if such lien be not established.

History: **Ap. p. Sec. 1863, C. Civ. Proc. 1895; re-en. Sec. 7166, Rev. C. 1907; amd. Sec. 1, Ch. 100, L. 1921; re-en. Sec. 9799, R.C.M. 1921; amd. Sec. 1, Ch. 69, L. 1925; amd. Sec. 1, Ch. 19, L. 1929; re-en. Sec. 9799, R.C.M. 1935; Sec. 93-8614, R.C.M. 1947; Ap. p. Sec. 1, Ch. 27, L. 1923; re-en. Sec. 9799.1, R.C.M. 1935; Sec. 93-8615, R.C.M. 1947; Ap. p. Sec. 1864, C. Civ. Proc. 1895; re-en. Sec. 7167, Rev. C. 1907; re-en. Sec. 9800, R.C.M. 1921; re-en. Sec. 9800, R.C.M. 1935; Sec. 93-8616, R.C.M. 1947; Ap. p. Sec. 15, p. 131, L. 1899; re-en. Sec. 5833, Rev. C. 1907; re-en. Sec. 8332, R.C.M. 1921; re-en. Sec. 8332, R.C.M. 1935; Sec. 45-415, R.C.M. 1947; Ap. p. Sec. 9, Ch. 196, L. 1935; re-en. Sec. 8374.9, R.C.M. 1935; Sec. 45-909, R.C.M. 1947; Ap. p. Sec. 1, Ch. 17, L. 1915; re-en. Sec. 8352, R.C.M. 1921; re-en. Sec. 8352, R.C.M. 1935; Sec. 45-602, R.C.M. 1947; R.C.M. 1947, 45-415(part), 45-602, 45-909, 93-8614, 93-8615, 93-8616.**

Part 2

Federal Tax Liens

71-3-201. Short title. This part may be cited as the "Revised Uniform Federal Tax Lien Registration Act".

History: **En. Sec. 6, Ch. 228, L. 1967; R.C.M. 1947, 45-1506.**

71-3-202. Uniformity of interpretation. This part shall be so construed as to effectuate its general purpose to make uniform the laws of those states which enact it.

History: **En. Sec. 5, Ch. 228, L. 1967; R.C.M. 1947, 45-1505.**

71-3-203. Execution of notices and certificates. Certification by the secretary of the treasury of the United States or his delegate of notices of liens, certificates, or other notices affecting tax liens entitles them to be filed. No other attestation, certification, or acknowledgment is necessary.

History: **En. Sec. 2, Ch. 228, L. 1967; R.C.M. 1947, 45-1502.**

71-3-204. Federal tax lien — place of filing. (1) Notices of liens upon real property for taxes payable to the United States and certificates and notices affecting the liens shall be filed in the office of the clerk and recorder of the county or counties in which the real property subject to a federal tax lien is situated.

(2) Notices of liens upon personal property, whether tangible or intangible, for taxes payable to the United States and certificates and notices affecting the liens shall be filed as follows:

(a) if the person against whose interest the tax lien applies is a corporation or a partnership whose principal executive office is in this state, as these entities are defined in the internal revenue laws of the United States, in the office of the secretary of state;

(b) in all other cases, in the office of the clerk and recorder of the county where the taxpayer resides at the time of filing of the notice of lien.

History: **En. Sec. 1, Ch. 228, L. 1967; R.C.M. 1947, 45-1501.**

71-3-205. Duties of filing officer. (1) If a notice of federal tax lien, a refiling of a notice of tax lien, or a notice of revocation of any certificate described in subsection (2) is presented to the filing officer and:

(a) he is the secretary of state, he shall cause the notice to be marked, held, and indexed in accordance with the provisions of 30-9-403(4) as if the notice were a financing statement within the meaning of the Uniform Commercial Code; or

(b) he is any other officer described in 71-3-204, he shall endorse thereon his identification and the date and time of receipt and forthwith file it alphabetically or enter it in an alphabetical index showing the name and address of the person named in the notice, the date and time of receipt, the serial number of the district director, and the total unpaid balance of the assessment appearing on the notice of lien.

(2) If a certificate of release, nonattachment, discharge, or subordination of any tax lien is presented to the secretary of state for filing he shall:

(a) cause a certificate of release or nonattachment to be marked, held, and indexed as if the certificate were a termination statement within the meaning of the Uniform Commercial Code, except that the notice of lien to which the certificate relates shall not be removed from the files; and

(b) cause a certificate of discharge or subordination to be held, marked, and indexed as if the certificate were a release of collateral within the meaning of the Uniform Commercial Code.

(3) If a refiled notice of federal tax lien referred to in subsection (1) or any of the certificates or notices referred to in subsection (2) is presented for filing with any other filing officer specified in 71-3-204, he shall permanently attach the refiled notice or the certificate to the original notice of lien and shall enter the refiled notice or the certificate with the date of filing in any alphabetical federal tax lien index on the line where the original notice of lien is entered.

(4) Upon request of any person, the filing officer shall issue his certificate showing whether there is on file, on the date and hour stated therein, any notice of federal tax lien or certificate or notice affecting the lien, filed on or after July 1, 1967, naming a particular person, and if a notice or certificate is on file, giving the date and hour of filing of each notice or certificate.

(5) The fee for a certificate is $2. Upon request, the filing officer shall furnish a copy of any notice of federal tax lien or notice or certificate affecting a federal tax lien for a fee of $1 per page.

History: En. Sec. 3, Ch. 228, L. 1967; R.C.M. 1947, 45-1503.

71-3-206. Fees. (1) The fee for filing and indexing each notice of lien or certificate or notice affecting the tax lien is:

(a) for a tax lien on real estate, $2;

(b) for a tax lien on tangible and intangible personal property, $2;

(c) for a certificate of discharge or subordination, $1;

(d) for all other notices, including a certificate of release or nonattachment, $2.

(2) The officer shall bill the district directors of internal revenue on a monthly basis for fees for documents filed by them.

History: En. Sec. 4, Ch. 228, L. 1967; R.C.M. 1947, 45-1504.

71-3-207. Prior filings of tax liens and notices. Filing officers with whom notices of federal tax liens, certificates, and notices affecting such liens have been filed on or before July 1, 1967, shall, after that date, continue to maintain a file labeled "federal tax lien notices filed prior to July 1, 1967", containing notices and certificates filed in numerical order of receipt. If a notice of lien was filed on or before July 1, 1967, any certificate or notice affecting the lien shall be filed in the same office.

History: **En. Sec. 9, Ch. 228, L. 1967; R.C.M. 1947, 45-1507.**

Part 3

Liens for Salaries and Wages

71-3-301. Priority when assignment of property made. In all assignments of property made by any person to trustees or assignees on account of the inability of the person, at the time of the assignment, to pay his debts or in proceedings of insolvency, the wages of the miners, mechanics, salesmen, servants, clerks, or laborers employed by such person, to the amount actually owed and for services rendered within the previous 4 months, are preferred claims and must be paid by such trustees or assignees before any other creditor of the assignor.

History: **En. Sec. 2050, 5th Div. Comp. Stat. 1887; amd. Sec. 2150, C. Civ. Proc. 1895; re-en. Sec. 7302, Rev. C. 1907; re-en. Sec. 8351, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1204; re-en. Sec. 8351, R.C.M. 1935; amd. Sec. 1, Ch. 109, L. 1943; R.C.M. 1947, 45-601.**

71-3-302. Priority in case of death of employer. In case of the death of any employer, the wages of each miner, mechanic, salesperson, clerk, servant, and laborer for services rendered within 4 months next preceding the death of the employer, in the amount actually owed, are preferred debts under 72-3-807(1)(e) and must be paid before other claims against the estate of the deceased person.

History: **En. Sec. 2051, 5th Div. Comp. Stat. 1887; re-en. Sec. 2151, C. Civ. Proc. 1895; re-en. Sec. 7303, Rev. C. 1907; re-en. Sec. 8353, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1205; re-en. Sec. 8353, R.C.M. 1935; amd. Sec. 2, Ch. 109, L. 1943; amd. Sec. 3, Ch. 263,L. 1975; amd. Sec. 25, Ch. 535, L. 1975; R.C.M. 1947, 45-603.**

71-3-303. Priority in cases of execution or attachment. In case of executions, attachments, and writs of similar nature issued against any person, except for claims for labor done, any miners, mechanics, salesmen, servants, clerks, or laborers who have claims against the defendant for labor done may give notice of their claims and the amount thereof, sworn to by the person making the claim, to the parties plaintiff and defendant to the action in which such execution, attachment, or other writ has been issued and upon the officer executing the same. Service of notice herein required may be made upon the officer charged with the execution of such writ in one or more cases that may be pending against such person, who shall forthwith serve such notice and claim, by copy, upon the parties plaintiff and defendant, if found in the county where such action is pending, or upon their respective attorneys employed in such case or cases pending.

History: **En. Sec. 2052, 5th Div. Comp. Stat. 1887; re-en. Sec. 2152, C. Civ. Proc. 1895; re-en. Sec. 7304, Rev. C. 1907; re-en. Sec. 8354, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1206; re-en. Sec. 8354, R.C.M. 1935; R.C.M. 1947, 45-604.**

71-3-304. Service of notice. (1) The officer serving said notice and claim shall forthwith, after service of the same, make return thereof showing such service, where and how made.

(2) Service may be made in any case at any time before the actual sale of the property levied upon in such pending action, and unless such claim is disputed by the debtor or a creditor or party plaintiff, such officer must pay such person out of the proceeds of the sale the amount he is entitled to receive for services rendered within the 4 months next preceding the levy of the writ, not exceeding the amount actually owed.

History: En. 2052, 5th Div. Comp. Stat. 1887; amd. Sec. 2153, C. Civ. Proc. 1895; re-en. Sec. 7305, Rev. C. 1907; re-en. Sec. 8355, R.C.M. 1921; re-en. Sec. 8355, R.C.M. 1935; amd. Sec. 3, Ch. 109, L. 1943; R.C.M. 1947, 45-605(part).

71-3-305. Proceeding if claim disputed. (1) If any or all of the claims so presented and claiming preference under this part are disputed by either the debtor or a creditor, the person presenting the same must commence an action within 10 days after notice of such dispute is served upon such claimant, as provided in subsection (2), for the recovery thereof. The officer must retain possession of so much of the proceeds of the sale as may be necessary to satisfy such claim and costs until the final determination of such action. In case judgment be had, the costs are a preferred claim, which may include a reasonable attorney's fee.

(2) The debtor or creditor intending to dispute any claim presented under the provisions of 71-3-303 shall, within 10 days after receiving notice of such claim, serve upon the claimant and officer holding such execution, attachment, or other writ a statement in writing, verified by the oath of the debtor or person disputing such claim for services, setting forth that no part of said claim, not exceeding a sum specified, is justly due from the debtor to the claimant for services rendered within the 4 months next preceding the levy of the execution, attachment, or other writ, as the case may be.

(3) If the claimant brings suit on a claim which is disputed in part only and fails to recover a sum exceeding that which was admitted to be due, he shall not recover costs, but costs shall be adjudged against him. Where such claimant fails to bring suit upon his claim, which is disputed in part only, he shall be deemed to have waived that portion of his claim disputed.

History: (1)En. 2052, 5th Div. Comp. Stat. 1887; amd. Sec. 2153, C. Civ. Proc. 1895; re-en. Sec. 7305, Rev. C. 1907; re-en. Sec. 8355, R.C.M. 1921; re-en. Sec. 8355, R.C.M. 1935; amd. Sec. 3, Ch. 109, L. 1943; Sec. 45-605, R.C.M. 1947; (2), (3)En. Sec. 2053, 5th Div. Comp. Stat. 1887; re-en. Sec. 2154, C. Civ. Proc. 1895; re-en. Sec. 7306, Rev. C. 1907; re-en. Sec. 8356, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1207; re-en. Sec. 8356, R.C.M. 1935; amd. Sec. 4, Ch. 109, L. 1943; Sec. 45-606, R.C.M. 1947; R.C.M. 1947, 45-605(part), 45-606.

71-3-306. Preferred claims — no dismissal of original action without consent. Persons having the preferred claims mentioned in this part are entitled to a lien upon the property attached or levied upon, and if said claims are not disputed or if a judgment is recovered for the same, the officer must pay such claims out of the property, and the original action cannot be dismissed without the consent of the owners of such preferred claims.

History: En. Sec. 2155, C. Civ. Proc. 1895; re-en. Sec. 7307, Rev. C. 1907; re-en. Sec. 8357, R.C.M. 1921; re-en. Sec. 8357, R.C.M. 1935; R.C.M. 1947, 45-607.

71-3-307. Liens not affected prior to four months of claim. Nothing in this part shall be construed so as to affect any lien, encumbrance, or mortgage held by any creditor of such employer prior to said 4 months.

History: En. Sec. 2054, 5th Div. Comp. Stat. 1887; re-en. Sec. 2156, C. Civ. Proc. 1895; re-en. Sec. 7308, Rev. C. 1907; re-en. Sec. 8358, R.C.M. 1921; re-en. Sec. 8358, R.C.M. 1935; amd. Sec. 5, Ch. 109, L. 1943; R.C.M. 1947, 45-608.

Part 4

Farm Laborers' Liens

71-3-401. Who may have lien — priority. (1) Any person who performs services for another in the capacity of a farm or ranch laborer has a lien on all crops of every kind grown, raised, or harvested by the person for whom the services were performed during that time as security for the payment of any wages due or owing to such persons for services so performed.

(2) The lien has priority over all other liens, chattel mortgages, or encumbrances except feed sufficient for 3 months for 1 horse, 2 cows and their calves, 4 hogs, and 50 domestic fowls and seed grain and threshers' liens. The wages for which a lien may be claimed may not be in excess of $1,000 or for a period of time exceeding 60 days next preceding the date of filing the lien. In case any such person without cause quits his employment before the expiration of the time for which he is employed, he is not entitled to a lien as herein provided.

(3) If several persons have or obtain liens under the provisions of this part against property of the same employer, they have no priority among themselves but all must be paid pro rata from the proceeds of any foreclosure sale according to the provisions of this part.

History: En. Secs. 1, 4, Ch. 196, L. 1935; re-en. Secs. 8374.1, 8374.4, R.C.M. 1935; R.C.M. 1947, 45-901, 45-904; amd. Sec. 3, Ch. 11, L. 1979.

71-3-402. How lien obtained. In order to acquire a lien, as specified in 71-3-401, the person performing such services shall, within 30 days after the services are fully performed, file in the office of the clerk and recorder in the county in which any of the real estate is situated on which any crop is grown, upon which a lien is claimed, a statement verified by affidavit of the person claiming such lien, his duly authorized agent, or attorney having knowledge of the facts, setting forth the terms of employment, the name of the employer, the time when the services were commenced and when ended, the wages agreed upon, if any, and if not agreed upon then the reasonable value of the same, the terms of payment, if any, and a description of the real estate on which any crop is grown or has been grown or harvested on which a lien is claimed, the amount paid him, if any, and the amount remaining unpaid and that said laborer claims a lien for the same and the address to which notice shall be directed as required by 71-3-404.

History: En. Sec. 2, Ch. 196, L. 1935; re-en. Sec. 8374.2, R.C.M. 1935; R.C.M. 1947, 45-902.

71-3-403. Filing. It shall be the duty of the clerk and recorder to file and enter said verified statement, and he shall be entitled to a fee as provided in 7-4-2631.

History: En. Sec. 3, Ch. 196, L. 1935; re-en. Sec. 8374.3, R.C.M. 1935; R.C.M. 1947, 45-903; amd. Sec. 1, Ch. 172, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "a fee as provided in 7-4-2631" for "a fee of 50 cents for filing the same".

71-3-404. Notice to other lienholders. (1) Every person intending to foreclose a lien secured under the provisions of this part must give a written notice to the owner or the person against whom the lien is claimed and all chattel mortgagees, encumbrancers, and all other lienholders who appear on record in the office of the county clerk and recorder that in not less than 10 days from the date of said lien notice he will institute proceedings for the foreclosure of his lien, and all other labor lienholders to whom notice is given shall have the right to join in said foreclosure proceedings and be entitled to a pro rata share of the proceeds of the foreclosure sale, as hereinafter provided. However, if the notified labor lienholders do not join in said proceedings, they shall not be entitled to share pro rata in the proceeds of the sale.

(2) The lien notice required herein must be given by registered or certified mail and directed to the last-known address of the owner or the person against whom the lien is claimed and to the addresses of the chattel mortgagees, encumbrancers, and all other lienholders as their addresses appear of record. The return of the foreclosure sale must be accompanied by due proof of the giving of such notice as required to be given herein.

History: En. Sec. 5, Ch. 196, L. 1935; re-en. Sec. 8374.5, R.C.M. 1935; R.C.M. 1947, 45-905.

71-3-405. Limitations of actions to foreclose liens. All actions for the foreclosure and enforcement of the lien herein provided for must be commenced within 90 days from the filing of the lien.

History: En. Sec. 10, Ch. 196, L. 1935; re-en. Sec. 8374.10, R.C.M. 1935; R.C.M. 1947, 45-910.

71-3-406. Rules of practice. (1) Except as otherwise provided in this part, the provisions of Title 25 are applicable to and constitute the rules of practice in the proceedings mentioned in this part.

(2) The provisions of Title 25 relative to new trials and appeals, except insofar as they are inconsistent with the provisions of this part, apply to the proceedings mentioned in this part.

History: (1)En. Sec. 6, Ch. 196, L. 1935; re-en. Sec. 8374.6, R.C.M. 1935; Sec. 45-906, R.C.M. 1947; (2)En. Sec. 7, Ch. 196, L. 1935; re-en. Sec. 8374.7, R.C.M. 1935; Sec. 45-907, R.C.M. 1947; R.C.M. 1947, 45-906, 45-907.

71-3-407. Parties. All persons interested in the matter in controversy or in property charged with the lien or having liens thereon may be made parties.

History: En. Sec. 8, Ch. 196, L. 1935; re-en. Sec. 8374.8, R.C.M. 1935; R.C.M. 1947, 45-908.

71-3-408. Acknowledgment of satisfaction of lien — penalty. Whenever the indebtedness which is a lien upon any of such crops is paid and satisfied, it is the duty of the lienor to acknowledge satisfaction thereof and to discharge the lien of record. If any lienor fails to acknowledge satisfaction and discharge said lien within 30 days after being requested to do so by a person having a property interest in such crops, he is liable to any person injured thereby in the amount of such injury and costs of action.

History: En. Sec. 11, Ch. 196, L. 1935; re-en. Sec. 8374.11, R.C.M. 1935; amd. Sec. 11-126, Ch. 264, L. 1963; R.C.M. 1947, 45-911.

Part 5

Mechanics' Liens

71-3-501. Who may have lien. Every mechanic, miner, machinist, architect, foreman, engineer, builder, lumberman, artisan, workman, laborer, and any other person performing any work and labor upon, or furnishing any material, machinery, or fixture for, any building, structure, bridge, flume, canal, ditch, aqueduct, mining claim, coal mine, quartz lode, tunnel, city or town lot, farm, ranch, fence, railroad, telegraph, telephone, electric light, gas, or waterworks or plant or any improvements, upon complying with the provisions of this part, for his work or labor done or material, machinery, or fixtures furnished has a lien upon the property upon which the work or labor is done or material is furnished.

History: En. Sec. 1, p. 332, Bannack Stat.; amd. Sec. 1, p. 509, Cod. Stat. 1871; re-en. Sec. 820, 5th Div. Rev. Stat. 1879; amd. Sec. 1370, 5th Div. Comp. Stat. 1887; amd. Sec. 2130, C. Civ. Proc. 1895; re-en. Sec. 7290, Rev. C. 1907; re-en. Sec. 8339, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1183; amd. Sec. 1, Ch. 23, L. 1925; re-en. Sec. 8339, R.C.M. 1935; amd. Sec. 1, Ch. 408, L. 1971; R.C.M. 1947, 45-501.

71-3-502. Priorities. (1) All liens for any work or labor done or materials furnished upon the same premises, which shall be filed within 30 days after the filing of the first lien on such premises, shall entitle the holders thereof to share equally pro rata, according to the amount of their respective liens, in the proceeds arising from the sale of such premises upon the foreclosure of such liens.

(2) If, after the expiration of 30 days, other liens are filed against such premises, then all liens filed within 60 days after the filing of such subsequent lien are liens of the second class and share pro rata in any proceeds arising from the sale of the premises which may remain after all liens of the first class have been paid.

(3) The liens for work or labor done or material furnished, as specified in this part, shall be prior to and have precedence over any mortgage, encumbrance, or other lien made subsequent to the commencement of work on any contract for the erection of such building, structure, or other improvement.

(4) The liens attach to the buildings, structures, or improvements for which they were furnished or the work was done in preference to any prior lien, encumbrance, or mortgage upon the land upon which said buildings, structures, or improvements are erected; and any person enforcing such lien may sell the same under execution, and the purchaser may remove the property sold within a reasonable time thereafter.

History: (1) thru (3)En. Secs. 8 and 9, p. 334, Bannack Stat.; re-en. Secs. 8 and 9, p. 511, Cod. Stat. 1871; amd. Secs. 1 and 2, p. 238, L. 2877; re-en. Sec. 827, 5th Div. Rev. Stat. 1879; amd. Sec. 1374, 5th Div. Comp. Stat. 1887; amd. Sec. 2, p. 71, Ex. L. 1887; en. Sec. 2133, C. Civ. Proc. 1895; re-en. Sec. 7293, Rev. C. 1907; re-en. Sec. 8342, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1185; re-en. Sec. 8342, R.C.M. 1935; Sec. 45-504, R.C.M. 1947; (4)En. Sec. 10, p. 334, Bannack Stat.; re-en. Sec. 10, p. 511, Cod. Stat. 1871; amd. Sec. 3, p. 238, L. 1877; amd. Sec. 829, 5th Div. Rev. Stat. 1879; amd. Sec. 1376, 5th Div. Comp. Stat. 1887; amd. Sec. 2135, C. Civ. Proc. 1895; re-en. Sec. 7295, Rev. C. 1907; re-en. Sec. 8344, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1186; re-en. Sec. 8344, R.C.M. 1935; Sec. 45-506, R.C.M. 1947; R.C.M. 1947, 45-504(part), 45-506.

71-3-503. Who deemed owners. Every person, including guardians of minors, married persons, and any company, association, or corporation, not a tenant or lessee, for whose use, benefit, or enjoyment any property, building, structure, or improvement mentioned in this part is constructed, repaired, or altered is deemed the owner thereof for the purposes of this part.

History: En. Sec. 1387, 5th Div. Comp. Stat. 1887; amd. Sec. 3, p. 72, Ex. L. 1887; amd. Sec. 2140, C. Civ. Proc. 1895; re-en. Sec. 7300, Rev. C. 1907; re-en. Sec. 8349, R.C.M. 1921; re-en. Sec. 8349, R.C.M. 1935; amd. Sec. 24, Ch. 535, L. 1975; R.C.M. 1947, 45-511.

71-3-504. Parties. All persons interested in the matter in controversy or in property charged with the lien or having liens thereon may be made parties.

History: En. Sec. 2138, C. Civ. Proc. 1895; re-en. Sec. 7298, Rev. C. 1907; re-en. Sec. 8347, R.C.M. 1921; re-en. Sec. 8347, R.C.M. 1935; R.C.M. 1947, 45-509.

71-3-505. Limitation on actions. All actions under this part must be commenced within 2 years from the date of the filing of the lien.

History: En. Sec. 2139, C. Civ. Proc. 1895; re-en. Sec. 7299, Rev. C. 1907; amd. Sec. 1, Ch. 127, L. 1921; re-en. Sec. 8348, R.C.M. 1921; re-en. Sec. 8348, R.C.M. 1935; R.C.M. 1947, 45-510.

71-3-506 through 71-3-510 reserved.

71-3-511. How to perfect lien. (1) Every person wishing to avail himself of the benefits of this part must file, with the county clerk of the county in which the property or premises mentioned in 71-3-501 is situated and within 90 days after the material or machinery aforesaid has been furnished or the work or labor performed, a just and true account of the amount due him, after allowing all credits, containing a correct description of the property to be charged with such lien, verified by affidavit, but any error or mistake in the account or description does not affect the validity of the lien if the property can be identified by the description. The paper containing the account, description, and affidavit is deemed the lien. When there is an open account between the parties for labor, material, or machinery, such lien may be filed within 90 days after the date of the last item in such account and include all items and charges contained therein for material or machinery furnished for, or work performed on, the property on which the lien is claimed.

(2) The time within which to perfect the lien by filing of the notice of lien is shortened if the provisions of 71-3-512 are complied with and a notice of completion is timely filed, in which event such notice of lien must be filed within 60 days immediately following the first publication of the notice of completion.

History: En. Sec. 6, p. 333, Bannack Stat.; amd. Sec. 6, p. 510, Cod. Stat. 1871; amd. Sec. 1, p. 84, L. 1874; re-en. Sec. 825, 5th Div. Rev. Stat. 1879; amd. Sec. 1371, 5th Div. Comp. Stat. 1887; amd. Sec. 1, p. 71, Ex. L. 1887; amd. Sec. 2131, C. Civ. Proc. 1895; En. Sec. 1, p. 162, L. 1901; re-en. Sec. 7291, Rev. C. 1907; re-en. Sec. 8340, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1187; re-en. Sec. 8340, R.C.M. 1935; amd. Sec. 2, Ch. 408, L. 1971; R.C.M. 1947, 45-502(1), (2).

71-3-512. Notice of completion. (1) The owner may file a notice of completion at any time after the completion of any work or improvement.

(2) The following acts or events constitute completion of any work or improvement for the purpose of filing a notice of completion:

(a) the written acceptance by the owner, his agent, or representative of the building, improvement, or structure. The filing of a notice of completion shall not be considered as an acceptance of the building, improvement, or other structure.

(b) the cessation from labor for 30 days upon any building, improvement, or structure, or the alteration, addition to, or repair thereof.

(3) The notice of completion together with an affidavit of publication as hereinafter required shall be filed in the office of the county clerk and

recorder of the county where the property is situated and the notice shall set forth:

(a) the date when the work or improvement was completed or the date on which cessation from labor occurred first and the period of its duration;

(b) the owner's name or owners' names, as the case may be, the address of the owner or addresses of the owners, as the case may be, and the nature of the title, if any, of the person signing the notice;

(c) a description of the property sufficient for identification;

(d) the name of the contractor, if any.

(4) The notice shall be verified by the owner or his agent.

(5) A copy of the notice of completion shall be published once each week for 3 successive weeks in a newspaper of general circulation in the county where the land on which the work or improvement was performed is situated.

History: (1), (3) thru (5)En. Sec. 3, Ch. 408, L. 1971; Sec. 45-502.1, R.C.M. 1947; (2)En. Sec. 6, p. 333, Bannack Stat.; amd. Sec. 6, p. 510, Cod. Stat. 1871; amd. Sec. 1, p. 84, L. 1874; re-en. Sec. 825, 5th Div. Rev. Stat. 1879; amd. Sec. 1371, 5th Div. Comp. Stat. 1887; amd. Sec. 1, p. 71, Ex. L. 1887; amd. Sec. 2131, C. Civ. Proc. 1895; En. Sec. 1, p. 162, L. 1901; re-en. Sec. 7291, Rev. C. 1907; re-en. Sec. 8340, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1187; re-en. Sec. 8340, R.C.M. 1935; amd. Sec. 2, Ch. 408, L. 1971; Sec. 45-502, R.C.M. 1947; R.C.M. 1947, 45-502(3), 45-502.1.

71-3-513. Filing with county clerk — notification of owner. (1) The county clerk must endorse upon every lien the day of its filing and make an abstract thereof in a book by him to be kept for that purpose and properly indexed, containing the date of the filing, the name of the person holding the lien, the amount thereof, the name of the person against whose property the lien is filed, and the description of the property to be charged with same.

(2) The clerk shall not file the lien unless there is attached thereto a certification by the lien claimant or his agent that a copy of the lien has been served upon each owner of record of the property named in the lien. Service shall be made by personal service on each owner or by mailing a copy of the lien by certified or registered mail with return receipt requested to each owner's last known address. The certification shall state whether service was made by delivery of certified or registered mail.

History: En. Sec. 7, p. 333, Bannack Stat.; re-en. Sec. 7, p. 510, Cod. Stat. 1871; amd. Sec. 2, p. 84, L. 1874; re-en. Sec. 826, 5th Div. Rev. Stat. 1879; re-en. Sec. 1373, 5th Div. Comp. Stat. 1887; amd. Sec. 2132, C. Civ. Proc. 1895; re-en. Sec. 7292, Rev. C. 1907; re-en. Sec. 8341, R.C.M. 1921; re-en. Sec. 8341, R.C.M. 1935; R.C.M. 1947, 45-503; amd. Sec. 1, Ch. 515, L. 1981.

Compiler's Comments

1981 Amendment: Added subsection (2).

71-3-514. What property affected. (1) The lien given extends to the lot or land upon which any such building, improvement, or structure is situated, to the extent of 1 acre, if outside of any town or city or, if within any town or city, then to the extent of the whole lot or lots upon which the same is situated, if the land belonged to the person who caused said building to be constructed, altered, or repaired; but if such person owned less than a fee-simple estate in such land, then only his interest therein is subject to such lien.

(2) When the interest in the land, building, structure, or other improvement is a leasehold interest, the forfeiture of such lease does not forfeit or

impair such liens so far as concerns the buildings, structures, and improvements put thereon by the persons charged with such lien, but the same may be sold to satisfy said lien and may be removed by the purchaser within 20 days after the sale thereof.

History: (1)En. Secs. 8 and 9, p. 334, Bannack Stat.; re-en. Secs. 8 and 9, p. 511, Cod. Stat. 1871; amd. Secs. 1 and 2, p. 238, L. 1877; re-en. Sec. 827, 5th Div. Rev. Stat. 1879; amd. Sec. 1374, 5th Div. Comp. Stat. 1887; amd. Sec. 2, p. 71, Ex. L. 1887; en. Sec. 2133, C. Civ. Proc. 1895; re-en. Sec. 7293, Rev. C. 1907; re-en. Sec. 8342, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1185; re-en. Sec. 8342, R.C.M. 1935; Sec. 45-504, R.C.M. 1947; (2)En. Sec. 9, p. 334, Bannack Stat.; re-en. Sec. 9, p. 511, Cod. Stat. 1871; re-en. Sec. 828, 5th Div. Rev. Stat. 1879; re-en. Sec. 1375, 5th Div. Comp. Stat. 1887; amd. Sec. 2134, C. Civ. Proc. 1895; re-en. Sec. 7294, Rev. C. 1907; re-en. Sec. 8343, R.C.M. 1921; re-en. Sec. 8343, R.C.M. 1935; Sec. 45-505, R.C.M. 1947; R.C.M. 1947, 45-504(part), 45-505.

71-3-515. Acknowledgment of satisfaction of lien — penalty. Whenever any indebtedness which is a lien upon any such real estate, structure, building, or other improvement is paid and satisfied, it is the duty of the creditors to acknowledge satisfaction thereof as in case of a mortgage; and if any creditor fails to acknowledge satisfaction, as aforesaid, he is liable to any person injured by such failure to the amount of such injury and the costs of action.

History: En. Sec. 841, 5th Div. Rev. Stat. 1879; re-en. Sec. 1385, 5th Div. Comp. Stat. 1887; amd. Sec. 2141, C. Civ. Proc. 1895; re-en. Sec. 7301, Rev. C. 1907; re-en. Sec. 8350, R.C.M. 1921; re-en. Sec. 8350, R.C.M. 1935; R.C.M. 1947, 45-512.

71-3-516. Substitution of bond allowed — filing — amount — condition. (1) Whenever a mechanic's lien has been filed upon real property or any improvements thereon, as enumerated in 71-3-501, the owner of any interest in such property, whether legal or beneficial, may, at any time before the lien claimant has commenced an action to foreclose such lien, file a bond with the clerk of the district court in the county in which such property is situated or, if such property is situated in more than one county, with the clerk of the district court of any county in which a part of such property is situated.

(2) Such bond shall be in an amount 1 ½ times the amount of the lien and shall be either in cash or written by a corporate surety company. If written by a corporate surety, such bond shall be approved by a judge of the district court with which such bond is filed.

(3) The bond shall be conditioned that if the lien claimant shall be finally adjudged to be entitled to recover upon the claim upon which his lien is based, the principal or his sureties shall pay to such claimant the amount of his judgment, together with any interest, costs, attorneys' fees, and other sums which such claimant would be entitled to recover upon the foreclosure of a lien against the principal.

History: En. Sec. 1, Ch. 338, L. 1971; R.C.M. 1947, 45-513.

71-3-517. Lien discharged upon filing of bond. Upon the filing of a bond as provided in 71-3-516, the lien against the real property shall forthwith be discharged and released in full and the bond shall be substituted for such lien.

History: En. Sec. 2, Ch. 338, L. 1971; R.C.M. 1947, 45-514.

71-3-518. Action upon bond — period of limitation same. (1) When a bond is filed as provided in 71-3-516, the person filing such lien may bring an action upon the bond.

(2) Such action shall be commenced within the time allowed for the commencement of an action upon foreclosure of a lien, and the statute of limitations applicable to a lien foreclosure shall apply to an action upon such bond as it would had no bond been filed.

History: En. Sec. 3, Ch. 338, L. 1971; R.C.M. 1947, 45-515.

71-3-519. Rules of practice. (1) Except as otherwise provided in this part, the provisions of Title 25 are applicable to and constitute the rules of practice in the proceedings mentioned in this part.

(2) The provisions of Title 25 relative to new trials and appeals, except insofar as they are inconsistent with the provisions of this part, apply to the proceedings mentioned in this part.

History: (1)En. Sec. 2136, C. Civ. Proc. 1895; re-en. Sec. 7296, Rev. C. 1907; re-en. Sec. 8345, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1198; re-en. Sec. 8345, R.C.M. 1935; Sec. 45-507, R.C.M. 1947; (2)En. Sec. 2137, C. Civ. Proc. 1895; re-en. Sec. 7297, Rev. C. 1907; re-en. Sec. 8346, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1199; re-en. Sec. 8346, R.C.M. 1935; Sec. 45-508, R.C.M. 1947; R.C.M. 1947, 45-507, 45-508.

Part 6

Loggers' Liens

71-3-601. Definition of lumber — who may have lien. (1) The term "lumber", as used in this part, shall be held and be construed to mean all logs or other timber sawed or split for use, including beams, joists, planks, boards, shingles, laths, staves, hoops, and every article of whatsoever nature or description manufactured from sawlogs or other timber.

(2) Every person, general partnership, limited partnership, corporation, or association performing labor upon, or who shall assist in obtaining or securing sawlogs, piling, railroad ties, cordwood, or other timber, has a lien upon the same and upon all other sawlogs, piling, railroad ties, cordwood, or other timber which, at the time of the filing of the claim or lien hereinafter provided, belonged to the person or corporation for whom the labor was performed, for the work or labor done upon or in obtaining or securing the particular sawlogs, piling, railroad ties, cordwood, or other timber in said claim or lien described, whether such work or labor was done at the instance of the owner of the same or his agent or a contractor or subcontractor or any person in behalf of such owner or his agent or a contractor or subcontractor. The cook in a logging camp shall be regarded as a person who assists in obtaining or securing any of the timber herein mentioned.

(3) Every person performing work or labor or assisting in manufacturing sawlogs and other timber into lumber and shingles has a lien upon such lumber while the same remains at the mill where it was manufactured or in the possession or under the control of the manufacturer, whether such work or labor was done at the instance of the owner of such logs or his agent or any contractor or subcontractor of such owner.

(4) Any person who shall permit another to go upon his timberland and cut thereon sawlogs, piling, railroad ties, cordwood, or other timber has a lien upon the same for the price agreed to be paid for such privilege or for the

price such privilege would be reasonably worth in case there was no express agreement fixing the price.

History: (1), (3)En. Sec. 2, p. 127, L. 1899; re-en. Sec. 5820, Rev. C. 1907; re-en. Sec. 8319, R.C.M. 1921; re-en. Sec. 8319, R.C.M. 1935; Sec. 45-402, R.C.M. 1947; (2)En. Sec. 1, p. 126, L. 1899; re-en. Sec. 5819, Rev. C. 1907; amd. Sec. 1, Ch. 60, L. 1909; re-en. Sec. 8318, R.C.M. 1921; Cal. Civ. C. Sec. 3065; re-en. Sec. 8318, R.C.M. 1935; amd. Sec. 1, Ch. 59, L. 1967; Sec. 45-401, R.C.M. 1947; (4)En. Sec. 3, p. 127, L. 1899; re-en. Sec. 5821, Rev. C. 1907; re-en. Sec. 8320, R.C.M. 1921; re-en. Sec. 8320, R.C.M. 1935; Sec. 45-403, R.C.M. 1947; R.C.M. 1947, 45-401, 45-402, 45-403.

71-3-602. Priority. The liens provided for in this part are preferred liens and prior to any other liens, and no sale or transfer of any sawlogs, piling, railroad ties, cordwood, or other timber or manufactured lumber or shingles shall divest the lien thereon as herein provided, and as between liens provided for in this part, those for work and labor shall be preferred. As between liens for work and labor claimed by several laborers on the same logs or lot of logs, the claims for work and labor done or performed on the identical logs proceeded against to the extent that said logs can be identified shall be preferred as against the general claims of liens for work and labor recognized and provided for in this part.

History: En. Sec. 4, p. 127, L. 1899; re-en. Sec. 5822, Rev. C. 1907; re-en. Sec. 8321, R.C.M. 1921; re-en. Sec. 8321, R.C.M. 1935; R.C.M. 1947, 45-404.

71-3-603. Extent of liens. (1) The person rendering the service or doing the work or labor named in 71-3-601(1) through (3) is only entitled to the liens as provided herein for services, work, or labor for the period of 3 calendar months, or any part thereof next preceding the filing of the claim, as provided in 71-3-606.

(2) The person granting the privilege mentioned in 71-3-601(4) is only entitled to the lien as provided therein for sawlogs, piling, railroad ties, cordwood, or other timber cut during the 3 months next preceding the filing of the claim, as provided in 71-3-605.

History: (1)En. Sec. 5, p. 128, L. 1899; re-en. Sec. 5823, Rev. C. 1907; re-en. Sec. 8322, R.C.M. 1921; re-en. Sec. 8322, R.C.M. 1935; Sec. 45-405, R.C.M. 1947; (2)En. Sec. 6, p. 128, L. 1899; re-en. Sec. 5824, Rev. C. 1907; re-en. Sec. 8323, R.C.M. 1921; re-en. Sec. 8323, R.C.M. 1935; Sec. 45-406, R.C.M. 1947; R.C.M. 1947, 45-405, 45-406.

71-3-604. Duration of lien. No lien provided for in this part binds any sawlogs, piling, railroad ties, cordwood, or other timber or lumber and shingles for a longer period than 8 calendar months after the claim as herein provided has been filed, unless a civil action be commenced in a proper court within that time to enforce the same. However, in case such civil action so commenced should for any cause, other than the merits, be dismissed, then the lien shall continue for the term of 1 calendar month, if the 8 months have expired to permit the commencement of another action thereon, which shall be as effective in prolonging the lien as if it had been entered during the term of 8 months hereinbefore stated.

History: En. Sec. 10, p. 129, L. 1899; re-en. Sec. 5828, Rev. C. 1907; re-en. Sec. 8327, R.C.M. 1921; re-en. Sec. 8327, R.C.M. 1935; R.C.M. 1947, 45-410.

71-3-605. How to obtain lien — form of claim. (1) Every person, within 30 days after the close of the rendition of the services or after the close of the work or labor mentioned in 71-3-601, claiming the benefit hereof must file for record with the county in which such sawlogs, piling, railroad ties, cordwood, or other timber were cut or in which such lumber or shingles were manufactured a claim containing a statement of his demand and the amount thereof, after deducting as nearly as possible all just credits and offsets, with the name of the person by whom he was employed, with a statement of the terms and conditions of his contract, if any. In case there is no express contract, the claim shall state what such service, work, or labor is reasonably worth. It shall also contain a description of the property to be charged with a lien sufficient for identification with reasonable certainty, which claim must be verified by the oath of himself or some other person to the effect that the affiant believes the same to be true.

(2) The claim shall be substantially in the following form:

...., Claimant, vs. ....

Notice is hereby given that .... of .... County, state of Montana, claims a lien upon a .... of ...., being about .... in quantity, which were cut or manufactured in .... County, state of Montana, are marked thus ...., and are now lying in a .... for labor performed upon and assistance rendered in .... said ....; that the name of the owner or reputed owner is ....; that .... employed said .... to perform such labor and render such assistance upon the following terms and conditions, to wit: The said .... agreed to pay the said .... for such labor and assistance ....; that said contract has been faithfully performed and fully complied with on the part of said ...., who performed labor upon and assisted in .... said .... for a period of ....; that said labor and assistance were so performed and rendered upon said .... between the .... day of .... and the .... day of ...., and the rendition of said service was closed on the .... day of ...., and 30 days have not elapsed since that time; that the amount of claimant's demand for said services is ....; that no part thereof has been paid except ...., and there is now due and remaining unpaid thereon, after deducting all just credits and offsets, the sum of ...., in which amount he claims a lien upon said ....; that said .... also claims a lien on all said .... now owned by said .... of said county, to secure payment for the work and labor performed in obtaining or securing the said logs, piling, railroad ties, cordwood, or other timber, lumber, or shingles herein described.

...., Claimant.

State of Montana,

County of ....

...., being first duly sworn, on oath says that he is .... named in the foregoing claim, has heard the same read, and knows the contents thereof, and believes the same to be true.

....

Subscribed and sworn to before me this .... day of ....

....

History: En. Sec. 7, p. 128, L. 1899; re-en. Sec. 5825, Rev. C. 1907; re-en. Sec. 8324, R.C.M. 1921; re-en. Sec. 8324, R.C.M. 1935; R.C.M. 1947, 45-407.

71-3-606. Claim for lien of landowner same. Every person mentioned in 71-3-601(4) claiming the benefit must file for record with the county clerk of the county in which such sawlogs, piling, railroad ties, cordwood, or other timber were cut a claim in substance the same as provided in 71-3-605 and verified as therein provided.

History: En. Sec. 8, p. 129, L. 1899; re-en. Sec. 5826, Rev. C. 1907; re-en. Sec. 8325, R.C.M. 1921; re-en. Sec. 8325, R.C.M. 1935; R.C.M. 1947, 45-408.

71-3-607. Immaterial defects in claim. No mistake or error in the statement of the demand or of the amount of credits and offsets allowed or of the balance asserted to be due to claimant or in the description of the property against which the claim is filed shall invalidate the lien unless the court finds that such mistake or error in the statement of the demand, credits and offsets, or of the balance due was made with intent to defraud or the court shall find that an innocent third party without notice, actual or constructive, has, since the claim was filed, become a bona fide owner of the property subject to the lien and that the notice of claim was so deficient that it did not put the party upon further inquiry in any manner.

History: En. Sec. 13, p. 130, L. 1899; re-en. Sec. 5831, Rev. C. 1907; re-en. Sec. 8330, R.C.M. 1921; re-en. Sec. 8330, R.C.M. 1935; R.C.M. 1947, 45-413.

71-3-608. Duties of county clerk. The county clerk must file any claim presented under the provisions of this part, endorse thereon the time of receiving the same, and keep the same in his office for the inspection of all persons and shall enter in a book, properly ruled and kept for such purpose, the names of all the parties, such names to be alphabetically arranged, the amount of the lien, and the time of filing the same.

History: En. Sec. 9, p. 129, L. 1899; re-en. Sec. 5827, Rev. C. 1907; re-en. Sec. 8326, R.C.M. 1921; re-en. Sec. 8326, R.C.M. 1935; R.C.M. 1947, 45-409.

71-3-609 and 71-3-610 reserved.

71-3-611. Enforcement of lien. (1) The liens provided for in this part shall be enforced by a civil action in the district court of the county wherein the lien was filed and shall be governed by the laws regulating the proceedings in civil actions touching the mode and manner of trial and the proceedings and laws to secure property, so as to hold it for the satisfaction of any lien that may be against it.

(2) Any person who shall bring a civil action to enforce the lien provided for, any person having a lien as provided for, or who shall be made a party to any such civil action has the right to demand that such lien be enforced against the whole or any part of the sawlogs, piling, railroad ties, cordwood, or other timber or manufactured lumber or shingles upon which he has performed labor or which he has assisted in securing or obtaining or which he has cut on his timberland during the 3 months next preceding the filing of his lien, for all his labor upon or for all his assistance in obtaining or securing said sawlogs, piling, railroad ties, cordwood, or other timber or in manufacturing said lumber into shingles during the whole or any part of the 3 months mentioned in 71-3-605, or for timber cut during the whole or any part of the 3 months above mentioned.

(3) Where proceedings are commenced against any lot of sawlogs, piling, railroad ties, cordwood or other timber or lumber or shingles, as herein provided, and some of the lienors claim liens against these specific sawlogs,

piling, railroad ties, cordwood, or other timber or lumber or shingles proceeded against and others against the same generally to secure their claim for work and labor, the priority of the liens shall be determined as hereinbefore provided.

History: (1)En. Sec. 11, p. 130, L. 1899; re-en. Sec. 5829, Rev. C. 1907; re-en. Sec. 8328, R.C.M. 1921; re-en. Sec. 8328, R.C.M. 1935; Sec. 45-411, R.C.M. 1947; (2), (3)En. Sec. 12, p. 130, L. 1899; re-en. Sec. 5830, Rev. C. 1907; re-en. Sec. 8329, R.C.M. 1921; re-en. Sec. 8329, R.C.M. 1935; Sec. 45-412, R.C.M. 1947; R.C.M. 1947, 45-411, 45-412.

71-3-612. Requirements to be bona fide purchaser. It shall be conclusively presumed by the court that a party purchasing the property subject to the lien within the 30 days given herein to claimants wherein to file their liens is not an innocent third party nor that he has become a bona fide owner of the property subject to the lien unless it shall appear that he has paid full value for the property and has seen that the purchase money of the property has been applied to the payment of such bona fide claims as are entitled to liens upon the same property under the provisions of this part, according to the priorities herein established.

History: En. Sec. 14, p. 131, L. 1899; re-en. Sec. 5832, Rev. C. 1907; re-en. Sec. 8331, R.C.M. 1921; re-en. Sec. 8331, R.C.M. 1935; R.C.M. 1947, 45-414.

71-3-613. Parties. Any number of persons claiming liens under this part may join in the affidavit in 71-3-605 and may join in the same action and when separate actions are commenced, the court may consolidate them.

History: En. Sec. 15, p. 131, L. 1899; re-en. Sec. 5833, Rev. C. 1907; re-en. Sec. 8332, R.C.M. 1921; re-en. Sec. 8332, R.C.M. 1935; R.C.M. 1947, 45-415(part).

71-3-614. Judgment and execution. In each civil action, judgment must be rendered in favor of each person having a lien for the amount due to him, and the court shall order any property subject to the lien to be sold by the sheriff of the proper county in the same manner that personal property is sold on execution, and the court shall apportion the proceeds of such sale to the payment of each judgment according to the priorities established in this part, pro rata in its class, according to the amount of such judgment.

History: En. Sec. 16, p. 131, L. 1899; re-en. Sec. 5834, Rev. C. 1907; re-en. Sec. 8333, R.C.M. 1921; re-en. Sec. 8333, R.C.M. 1935; R.C.M. 1947, 45-416.

71-3-615. Sale of property to satisfy lien. The court may order any property subject to a lien as provided in this part to be sold by the sheriff as personal property is sold on execution, either before or at the time judgment is rendered, as provided in 71-3-614, and the proceeds of such sale must be paid into court to be applied as directed in 71-3-614.

History: En. Sec. 17, p. 132, L. 1899; re-en. Sec. 5835, Rev. C. 1907; re-en. Sec. 8334, R.C.M. 1921; re-en. Sec. 8334, R.C.M. 1935; R.C.M. 1947, 45-417.

71-3-616. Penalty for destroying means of identification of property. Any person who shall eloign, injure, or destroy or who shall render difficult, uncertain, or impossible of identification any sawlogs, piling, railroad ties, cordwood, shingles, or other timber upon which there is a lien as herein provided, without the express consent of the person entitled to such lien, shall be liable to a lienholder for the damages to the amount secured by his lien, and it being shown to the court in a civil action to enforce said lien, it shall be the duty of the court to enter a personal judgment for the amount in such action against the person, provided he be a party to such action, or the damages may be recovered by a civil action against such person.

History: En. Sec. 18, p. 132, L. 1899; re-en. Sec. 5836, Rev. C. 1907; re-en. Sec. 8335, R.C.M. 1921; re-en. Sec. 8335, R.C.M. 1935; R.C.M. 1947, 45-418.

Part 7

Crop Liens for Seed or Grain and Liens for Hail Insurance

71-3-701. Lien for seed or grain. Any person, company, association, or corporation who shall furnish to another seed to be sown or planted or funds or means with which to purchase such seed to be sown or planted or to be used in the production or cultivation of a crop or crops on the lands owned or contracted to be purchased, used, leased, occupied, or rented by him or held under government entry shall, upon filing the statement provided for in 71-3-703, have a lien not exceeding the purchase price of 700 bushels upon the crop produced from the seed or grain so furnished, or any part thereof, and upon the seed or grain threshed from such crop to secure the payment of the amount or the value of the seed or grain so furnished or the funds or means advanced to purchase the same.

History: En. Sec. 1, Ch. 23, L. 1915; amd. Sec. 1, Ch. 15, Ex. L. 1918; re-en. Sec. 8359, R.C.M. 1921; re-en. Sec. 8359, R.C.M. 1935; R.C.M. 1947, 45-701.

71-3-702. Priority. The lien provided by 71-3-701 shall, as to the crop covered thereby, have priority over all other liens and encumbrances thereon.

History: En. Sec. 3, Ch. 23, L. 1915; re-en. Sec. 3, Ch. 15, Ex. L. 1918; re-en. Sec. 8361, R.C.M. 1921; re-en. Sec. 8361, R.C.M. 1935; R.C.M. 1947, 45-703.

71-3-703. How to obtain lien. Any person who is entitled to a lien under 71-3-701 shall, within 30 days after the seed or grain is furnished or the funds, means, or moneys advanced therefor, file in the office of the county clerk and recorder of the county in which such seed or grain is to be planted or used a statement in writing verified under oath showing the kind and quantity of the seed or grain furnished, its value, or the amount of the funds or money advanced to pay therefor, the name of the person or persons to whom furnished, and a description of the land and of each tract of land upon which the same is to be or has been planted or sown or used in the production of a crop. Unless the person entitled to such lien shall file such statement within the time aforesaid, he shall be deemed to have waived the right thereto.

History: En. Sec. 2, Ch. 23, L. 1915; amd. Sec. 2, Ch. 15, Ex. L. 1918; re-en. Sec. 8360, R.C.M. 1921; re-en. Sec. 8360, R.C.M. 1935; R.C.M. 1947, 45-702.

71-3-704. Acknowledgment of satisfaction of lien — penalty. Whenever the indebtedness which is a lien upon such grain or other crops is paid and satisfied, it is the duty of the lienor to acknowledge satisfaction thereof and to discharge the lien of record. If any lienor fails to acknowledge satisfaction and discharge of said lien as aforesaid within 30 days after being requested to do so by a person having a property interest in such grain or other crops, he is liable to any person injured thereby in the amount of such injury and the costs of the action.

History: En. Sec. 4, Ch. 15, Ex. L. 1918; re-en. Sec. 8362, R.C.M. 1921; re-en. Sec. 8362, R.C.M. 1935; amd. Sec. 11-123, Ch. 264, L. 1963; R.C.M. 1947, 45-704.

71-3-705. Destruction of records — when allowed. (1) All seed liens which have heretofore or shall hereafter be filed for record in the office of any county clerk and recorder of the several counties in the state shall be retained by such county clerk in a file kept by him for such purposes for a period of 8 years from the time when said seed lien has ceased to be a lien on the property described therein.

(2) Upon the expiration of the period of time specified in subsection (1), the county clerk and recorder may destroy all seed liens which have been preserved for the period of time specified in this section.

History: (1)En. Sec. 1, Ch. 113, L. 1935; re-en. Sec. 4813.3, R.C.M. 1935; amd. Sec. 11-112, Ch. 264, L. 1963; Sec. 16-2922, R.C.M. 1947; (2)En. Sec. 2, Ch. 113, L. 1935; re-en. Sec. 4813.4, R.C.M. 1935; amd. Sec. 11-113, Ch. 264, L. 1963; Sec. 16-2923, R.C.M. 1947; R.C.M. 1947, 16-2922(part), 16-2923(part).

71-3-706 through 71-3-710 reserved.

71-3-711. Lien for hail insurance. Any person, company, association, or corporation which shall furnish to another hail insurance for the purpose of protecting the party's crop from damage by hail during the hail season of the then-growing or seeded crop, whether the crop be on the land owned or contracted to be purchased, used, leased, occupied, or rented by the insured or held under government entry, shall, upon filing the statement provided for in 71-3-712, have a lien, subject to any seed lien that may then or thereafter be placed on record against the crop, for the amount due the person, company, association, or corporation furnishing the hail insurance from the insured so protected, whether it be on a note given, open account, or assessment, due or to become due, for the current year's protection, upon the crop produced on the land so protected or any part thereof and upon the seed or grain threshed from such crop to secure the payment of the amount due or the assessment levied against the insured for the insurance provided.

History: En. Sec. 1, Ch. 223, L. 1921; re-en. Sec. 8363, R.C.M. 1921; re-en. Sec. 8363, R.C.M. 1935; R.C.M. 1947, 45-705.

71-3-712. How lien obtained. Any person who is entitled to a lien under 71-3-711 shall, within 30 days after the insurance is issued, file in the office of the county clerk and recorder of the county in which the crop so insured is located a statement in writing verified under oath giving the description of the land upon which the crop is planted, together with the kind of crop insured; provided that with a mutual company it may file a lien for the largest amount that may become due under its assessment power, and in the event that the amount assessed shall not be as large as the amount of the lien claimed, then the amount assessed and due shall be the amount the mutual insurance company shall be entitled to under this lien. Unless the person, company, association, or corporation entitled to such a lien shall file such statement within the time aforesaid, he or it shall be deemed to have waived the right thereto.

History: **En. Sec. 2, Ch. 223, L. 1921; re-en. Sec. 8364, R.C.M. 1921; re-en. Sec. 8364, R.C.M. 1935; R.C.M. 1947, 45-706.**

71-3-713. Acknowledgment of satisfaction of lien — penalty. Whenever the indebtedness, which is a lien upon such grain or other crops, is paid or satisfied on or before November 1 of the current year, it is the duty of the lienor to acknowledge satisfaction thereof within 20 days after receiving payment and to discharge the lien of record. If any lienor fails to acknowledge satisfaction and discharge of said lien as aforesaid, he is liable to any person injured thereby in the amount of such injury and the costs of action. If any hail lien is not satisfied on or before March 1 of the next succeeding year after the insurance was carried on the crop, the same shall be deemed satisfied and released of record.

History: **En. Sec. 3, Ch. 223, L. 1921; re-en. Sec. 8365, R.C.M. 1921; re-en. Sec. 8365, R.C.M. 1935; amd. Sec. 11-124, Ch. 264, L. 1963; R.C.M. 1947, 45-707.**

Part 8

Threshers' Liens

71-3-801. Who may have lien — amount. (1) All threshermen or swathers owning or operating threshing or swathing machines and all owners of combine harvesters and threshers shall have a lien upon the grain and other crops swathed or threshed by said threshing or swathing machine or cut and threshed by said combine harvester and thresher for and on account of the services rendered and the labor performed by them on said grain and crops and which lien may be claimed by the owner of said grain for the reasonable value of such services if same are performed by him. Liens on grain and other crops shall be charged for at the prevailing price for that particular locality in which such grain or other crop is threshed, harvested, or combined, provided notices are given and lien is filed within the time provided by this part.

(2) If the prevailing price for threshing, harvesting, or combining grain or other crop is disputed by the thresherman or swather and the owner of the grain or other crop, the matter may be submitted to arbitration under the provisions of chapter 5, Title 27.

History: **En. Sec. 1, Ch. 25, L. 1915; re-en. Sec. 8366, R.C.M. 1921; amd. Sec. 1, Ch. 20, L. 1929; amd. Sec. 1, Ch. 112, L. 1931; amd. Sec. 1, Ch. 124, L. 1933; re-en. Sec. 8366, R.C.M. 1935; amd. Sec. 1, Ch. 308, L. 1973; R.C.M. 1947, 45-801.**

71-3-802. How lien obtained. (1) Every person intending to avail himself of the benefits of this part must file with the county clerk of the county in which said grain or other crops were grown, within 10 days after the last service was rendered or labor performed in the threshing of said grain or other crops or the cutting and harvesting and threshing by said combined harvester and thresher, a notice that within 20 days a lien, as specified in 71-3-801, will be claimed and within 20 days thereafter shall file with the county clerk and recorder of the county in which said grain or other crops were grown a just and true account of the amount due him or them for such services or labor after allowing all just credits and offsets and containing a correct description of the grain or other crops to be charged with such lien, the price agreed upon for such threshing or cutting and harvesting, the name of the person, firm, or corporation for whom such labor and services were performed, and a description of the lands as nearly as possible upon which said grain or other crops were raised, and a description of the legal subdivision of land upon which said grain is stored and, if said grain is stored in an elevator, the locality of the elevator, which statements of facts shall be verified by affidavit of the person claiming such lien or his duly authorized agent or attorney having knowledge of the facts. Any error or mistake in the account or description of the grain or other crops or of the property upon which it was raised shall not invalidate such lien.

(2) If the grain or other crops so cut, harvested, and threshed are being hauled from the machine or combine direct to the elevator or to any other purchaser, then the threshermen or owner of the combine desiring to claim such lien shall also serve written notices upon the elevatorman or other private purchaser that he will claim and file a lien upon said grain or other crops for his services or labor performed in threshing or combining and threshing the same.

History: En. Sec. 2, Ch. 25, L. 1915; amd. Sec. 1, Ch. 162, L. 1917; amd. Sec. 1, Ch. 71, L. 1921; re-en. Sec. 8367, R.C.M. 1921; amd. Sec. 2, Ch. 20, L. 1929; amd. Sec. 2, Ch. 112, L. 1931; re-en. Sec. 8367, R.C.M. 1935; amd. Sec. 2, Ch. 308, L. 1973; R.C.M. 1947, 45-802.

71-3-803. Filing with county clerk. The county clerk must endorse upon such lien the day of its filing, make an abstract thereof in a book kept by him for that purpose and properly indexed, containing the date of the filing, the name of the person claiming the lien, the amount thereof, the name of the person against whose property the lien is filed, and a description of the property to be charged with the same.

History: En. Sec. 3, Ch. 25, L. 1915; re-en. Sec. 8368, R.C.M. 1921; re-en. Sec. 8368, R.C.M. 1935; R.C.M. 1947, 45-803.

71-3-804. Priority. The lien for work or labor done or services rendered as specified in 71-3-801 shall be prior to and have precedence over any mortgage, encumbrance, or other lien upon said grain or other crops, except the lien for the seed furnished for the purpose of growing this particular crop.

History: En. Sec. 4, Ch. 25, L. 1915; re-en. Sec. 8369, R.C.M. 1921; re-en. Sec. 8369, R.C.M. 1935; R.C.M. 1947, 45-804.

71-3-805. Who considered owners. Every person, including guardians or minors, married persons, and any company, firm, association, or corporation for whose use or benefit the grain or other crops mentioned herein are threshed or the services rendered or labor performed is deemed the owner thereof for the purposes herein mentioned.

History: En. Sec. 8, Ch. 25, L. 1915; re-en. Sec. 8373, R.C.M. 1921; re-en. Sec. 8373, R.C.M. 1935; amd. Sec. 26, Ch. 535, L. 1975; R.C.M. 1947, 45-808.

71-3-806. Parties. All persons interested in the matter in controversy or the property to be charged with the lien or having liens thereon may be made parties to an action for the foreclosure thereof.

History: En. Sec. 7, Ch. 25, L. 1915; re-en. Sec. 8372, R.C.M. 1921; re-en. Sec. 8372, R.C.M. 1935; R.C.M. 1947, 45-807.

71-3-807. Limitations of actions. All actions for the foreclosure and enforcement of the lien herein provided for must be commenced within 6 months from the filing of the lien.

History: En. Sec. 5, Ch. 25, L. 1915; re-en. Sec. 8370, R.C.M. 1921; amd. Sec. 1, Ch. 28, L. 1923; re-en. Sec. 8370, R.C.M. 1935; R.C.M. 1947, 45-805.

71-3-808. Acknowledgment of satisfaction of lien — penalty. Whenever the indebtedness which is a lien upon any such grain or other crops is paid and satisfied, it is the duty of the lienor to acknowledge satisfaction thereof and to discharge the lien of record; and if any lienor fails to acknowledge satisfaction and discharge said lien as aforesaid within 30 days after being requested to do so by a person having a property interest in such grain or other crops, he is liable to any person injured thereby in the amount of such injury and the costs of action.

History: En. Sec. 9, Ch. 25, L. 1915; re-en. Sec. 8374, R.C.M. 1921; re-en. Sec. 8374, R.C.M. 1935; amd. Sec. 11-125, Ch. 264, L. 1963; R.C.M. 1947, 45-809.

71-3-809. Rules of practice. Except as otherwise provided, the provisions of Title 25 are applicable to and constitute the rules of practice for the enforcement and foreclosure of the lien herein provided for.

History: En. Sec. 6, Ch. 25, L. 1915; re-en. Sec. 8371, R.C.M. 1921; re-en. Sec. 8371, R.C.M. 1935; R.C.M. 1947, 45-806.

71-3-810. Destruction of records — when allowed. (1) All threshers' liens which have heretofore or shall hereafter be filed for record in the office of any county clerk and recorder of the several counties in the state shall be retained by such county clerk in a file kept by him for such purposes for a period of 8 years from the time when said threshers' lien has ceased to be a lien on the property described therein.

(2) Upon the expiration of the period of time specified in subsection (1), the county clerk and recorder may destroy all threshers' liens which have been preserved for the period of time specified in this section.

History: (1)En. Sec. 1, Ch. 113, L. 1935; re-en. Sec. 4813.3, R.C.M. 1935; amd. Sec. 11-112, Ch. 264, L. 1963; Sec. 16-2922, R.C.M. 1947; (2)En. Sec. 2, Ch. 113, L. 1935; re-en. Sec. 4813.4, R.C.M. 1935; amd. Sec. 11-113, Ch. 264, L. 1963; Sec. 16-2923, R.C.M. 1947; R.C.M. 1947, 16-2922(part), 16-2923(part).

Part 9

Crop or Grain Liens for Spraying or Dusting

71-3-901. Who may have lien — amount. Any person, firm, corporation, or partnership which shall under contract, express or implied, perform labor or services or furnish material in crop dusting or spraying grains or crops for the purpose of weed, disease, or insect control for promoting the growth of such grains or crops shall have a lien upon all such grains or crops so crop dusted or sprayed for and on account of the labor or service performed and material furnished, upon complying with the provisions of this part; provided, however, that any such lien shall not exceed $1.50 per acre for spraying or dusting wheat, and in the case of other grain or crops, such lien shall not exceed the prevailing price charged in the particular locality in which such grain or crops is sprayed or dusted.

History: En. Sec. 1, Ch. 205, L. 1953; R.C.M. 1947, 45-1401.

71-3-902. How lien obtained. Any person, firm, corporation, or partnership who is entitled to a lien under this part shall, within 60 days after the last labor or service was performed or material furnished in crop dusting or spraying grains or crops, file in the office of the county clerk and recorder of the county in which said grains or crops were grown a just and true account of the amount due for such services, labor, or material after allowing all proper credits and offsets and containing a description of the grain or crops to be charged with such lien, the price agreed upon for such labor or service or material or, if no price was agreed upon, the reasonable value of the same, together with the name of the person, firm, or corporation for whom such labor or services were performed or material furnished and a description of the lands as nearly as possible upon which said grains or crops were raised, which statements of fact shall be verified by affidavit of the person, firm, corporation, or partnership claiming such lien or his, their, or its duly authorized agent or attorney having knowledge of the facts.

History: En. Sec. 2, Ch. 205, L. 1953; amd. Sec. 1, Ch. 65, L. 1955; R.C.M. 1947, 45-1402.

71-3-903. Filing with county clerk. The county clerk must endorse upon such lien the day of its filing, make an abstract thereof in a book kept by him for that purpose and properly indexed, containing the date of the filing, the name of the person, firm, corporation, or partnership claiming the lien, the amount thereof, the name of the person against whose property the lien is filed, and a description of the property to be charged with the same.

History: En. Sec. 3, Ch. 205, L. 1953; R.C.M. 1947, 45-1403.

71-3-904. Priority. The lien for labor or services performed or material furnished as specified in this part shall be prior to and have precedence over any mortgage, encumbrance, or other lien upon said grain or crops, except the lien for seed, hail insurance, threshing, labor, and warehouse services furnished for the purpose of growing or handling the particular grain or crops.

History: En. Sec. 4, Ch. 205, L. 1953; R.C.M. 1947, 45-1404.

71-3-905. Who considered owners. Every person, including guardians or minors, and any company, firm, association, or corporation for whose use or benefit the grain or other crops mentioned herein are dusted or sprayed or the services or labor performed or material furnished is deemed the owner thereof for the purposes herein mentioned.

History: En. Sec. 9, Ch. 205, L. 1953; R.C.M. 1947, 45-1409.

71-3-906. Parties. All persons interested in the matter in controversy or the property to be charged with the lien or having liens thereon shall be made parties to an action for the foreclosure thereof.

History: En. Sec. 8, Ch. 205, L. 1953; R.C.M. 1947, 45-1408.

71-3-907. Limitations of actions. All actions for the foreclosure and enforcement of the lien herein provided for must be commenced within 1 year from the day of the filing of the lien.

History: En. Sec. 5, Ch. 205, L. 1953; R.C.M. 1947, 45-1405.

71-3-908. Acknowledgment of satisfaction and discharge of lien — penalty. Whenever the indebtedness which is a lien upon any grain or crops is paid and satisfied, it is the duty of the lienor to acknowledge satisfaction thereof and to discharge the lien of record. If any lienor fails to acknowledge satisfaction and discharge said lien within 30 days after being requested to do so by a person having a property interest in such grain or crops, he is liable to any person injured thereby in the amount of such injury and the costs of action.

History: En. Sec. 10, Ch. 205, L. 1953; amd. Sec. 11-129, Ch. 264, L. 1963; R.C.M. 1947, 45-1410.

71-3-909. Rules of practice. (1) Except as otherwise provided, the provisions of Title 25 are applicable to and constitute the rules of practice for the enforcement and foreclosure of the lien herein provided for.

(2) The provisions of Title 25 relative to new trials and appeals, except insofar as they are inconsistent with the provisions of this part, apply to the proceedings mentioned in this part.

History: (1)En. Sec. 6, Ch. 205, L. 1953; Sec. 45-1406, R.C.M. 1947; (2)En. Sec. 7, Ch. 205, L. 1953; Sec. 45-1407, R.C.M. 1947; R.C.M. 1947, 45-1406, 45-1407.

Part 10

Laborers' and Materialmen's Liens on Oil and Gas Wells and Pipelines

71-3-1001. Definitions. As used in this part, the following definitions apply:

(1) "Furnish" means sell or rent.

(2) "Material" means material, fuel, machinery, equipment, appliances, buildings, structures, tools, bits, or supplies but does not include drilling rigs or hoists or their integral component parts except wire lines.

(3) "Owner" includes a person holding any interest in the legal or equitable title, or both, and purchasers under executory contract.

History: (1), (2)En. 45-1012 by Sec. 12, Ch. 143, L. 1957; Sec. 45-1012, R.C.M. 1947; (3)En. 45-1011 by Sec. 11, Ch. 143, L. 1957; Sec. 45-1011, R.C.M. 1947; R.C.M. 1947, 45-1011(part), 45-1012.

71-3-1002. Lien for labor and materials furnished for use on leasehold for oil and gas purposes or pipelines. (1) Any person, corporation, or partnership which shall under contract, expressed or implied, with the owner of any leasehold for oil and gas purposes or the owner of any gas pipe or oil pipeline or with the trustee or agent of such owner, perform labor or furnish material or services used in the digging, drilling, torpedoing, completing, operating, or repairing of any oil or gas well or oil or gas pipeline or who shall furnish any material or services or perform any labor in constructing or putting together any of the machinery used in digging, drilling, torpedoing, operating, completing, or repairing any oil or gas well or oil or gas pipeline, whether or not such material is incorporated therein or becomes a part thereof, shall have a lien for the amount due therefor, including transportation and mileage charges connected therewith and interest from the date the same was due, upon the whole of such leasehold or oil or gas pipeline, the appurtenances thereon, and upon all material owned by the owner of such leasehold or oil or gas pipeline and used in the digging, drilling, torpedoing, completing, operating, or repairing of any such oil or gas well or oil or gas pipeline and upon all oil or gas wells located on such leasehold and upon all oil or gas produced from such leasehold and the proceeds thereof inuring to the working interest therein as such working interest existed on the date the labor was first performed or materials or services were first furnished.

(2) However, in the event labor is performed for, or materials or services are furnished to, the owner of the working interest in only a portion of the acreage covered by a lease, the lien granted herein shall be restricted to such portion of the acreage.

(3) The lien herein granted shall not extend to any royalty interests, overriding royalty interests, or oil payments created prior to the date the first item of material or services are furnished or the date the first labor is performed.

History: **En. Sec. 1, Ch. 45, L. 1917; re-en. Sec. 8375, R.C.M. 1921; amd. Sec. 1, Ch. 152, L. 1923; re-en. Sec. 8375, R.C.M. 1935; amd. Sec. 1, Ch. 143, L. 1957; R.C.M. 1947, 45-1001.**

71-3-1003. Lien for labor or supplies furnished for contractor. Any person, partnership, or corporation that furnishes materials or services as a subcontractor or to a contractor or a subcontractor or any person who performs labor under a subcontractor with a contractor or who, as an artisan or day laborer in the employ of such contractor or subcontractor, performs any such labor has a lien upon all the property upon which the lien of an original contractor may attach to the same extent as an original contractor, and the lien provided for in this section attaches to all materials and fixtures owned by such original contractor or subcontractor for whom the labor is performed or materials or services furnished and used or employed or furnished to be used or employed in the drilling or operating of such oil and gas wells or in the construction of such pipeline.

History: **En. Sec. 2, Ch. 45, L. 1917; re-en. Sec. 8376, R.C.M. 1921; re-en. Sec. 8376, R.C.M. 1935; amd. Sec. 2, Ch. 143, L. 1957; R.C.M. 1947, 45-1002; amd. Sec. 4, Ch. 11, L. 1979.**

71-3-1004. How lien perfected. Every person, corporation, or partnership claiming a lien under this part shall file with the county clerk of the county in which such land, leasehold, or pipeline or some part thereof is situated a statement verified by affidavit setting forth the amount claimed and the items thereof, the dates on which labor was performed or material or services furnished, the name of the owner of the leasehold or pipeline, if known, the name of the claimant and his mailing address, a description of the leasehold or pipeline, and if the claimant be a claimant under 71-3-1003, the name of the person for whom the labor was immediately performed or the material or services were immediately furnished. Such statement must be filed within 6 months after the date upon which said material or services were last furnished or labor last performed under contract.

History: **En. 45-1004.1 by Sec. 2, Ch. 170, L. 1973; R.C.M. 1947, 45-1004.1.**

71-3-1005. Enforcement of liens — duty of county clerks. The liens herein created shall be enforced in the same manner and the duty of county clerks with respect to the filing and abstracting of liens shall be the same as now provided by the laws for materialmen's and mechanic's liens.

History: **En. Sec. 3, Ch. 45, L. 1917; re-en. Sec. 8377, R.C.M. 1921; amd. Sec. 2, Ch. 152, L. 1923; re-en. Sec. 8377, R.C.M. 1935; amd. Sec. 3, Ch. 143, L. 1957; amd. Sec. 1, Ch. 193, L. 1963; amd. Sec. 1, Ch. 170, L. 1973; R.C.M. 1947, 45-1003.**

71-3-1006. Date lien arises. The lien provided for in this part arises on the date of the furnishing of the first item of material or services or the date of performance of the first labor.

History: En. 45-1004.2 by Sec. 3, Ch. 170, L. 1973; R.C.M. 1947, 45-1004.2(part).

71-3-1007. Priority. (1) Upon compliance with the provisions of 71-3-1004, such lien shall be preferred to all other titles, charges, liens, or encumbrances which may attach to or upon any of the property upon which a lien is given by this part subsequent to the date the lien herein provided for arises.

(2) All liens affixed by virtue of this part upon the same property shall be of equal standing.

(3) The lien herein provided for shall have no priority over other liens, encumbrances, or mortgages which are filed or recorded prior to the date of the furnishing of the first item of material or services or the date of performance of the first labor.

History: (1), (2)En. 45-1004.2 by Sec. 3, Ch. 170, L. 1973; Sec. 45-1004.2, R.C.M. 1947; (3)En. 45-1004.3 by Sec. 4, Ch. 170, L. 1973; Sec. 45-1004.3, R.C.M. 1947; R.C.M. 1947, 45-1004.2(part), 45-1004.3.

71-3-1008. Lien for running account as single contract. All labor performed or materials or services furnished by any person entitled to a lien under this part upon the same leasehold for oil and gas purposes or the same pipeline shall for the purposes of this part be considered as having been performed or furnished under a single contract regardless of whether or not the same was performed or furnished at different times or on separate orders, provided that no more than 6 months shall have elapsed between the date of performance of such labor or the date of furnishing such material or services and the date on which labor is next performed or materials or services are next furnished.

History: En. 45-1007 by Sec. 7, Ch. 143, L. 1957; R.C.M. 1947, 45-1007.

71-3-1009. Liability fixed. Nothing in this part shall be construed to fix a greater liability against the owner of the land or leasehold interest therein than the price or sum stipulated by such owner to be paid for such materials or services furnished or labor performed. However, the risk of all payments made to the original contractor shall be upon such owner if such payments be made after written notice from a person other than an original contractor is received by such owner at his residence or principal place of business, which notice shall set forth the name and address of the claimant and the amount and nature of his claim. Payment by the owner to the original contractor of all or any part of the contract price, prior to the receipt of such notice, shall operate to discharge and satisfy all liens attaching to the property of such owner by virtue of this part to the extent of such payment. The owner shall not have the right to offset obligations of the original contractor unless such obligations arise out of the original contract.

History: En. 45-1008 by Sec. 8, Ch. 143, L. 1957; R.C.M. 1947, 45-1008.

71-3-1010. Removal of property covered by lien prohibited — effect of wrongful removal. (1) When any lien provided for by this part shall have attached to the property covered thereby, it shall be unlawful for any person to remove such property or any part thereof or cause the same to be removed from the land or premises where located at the time such lien attached or otherwise dispose of the same without the written consent of the holder of such lien.

(2) In the event such property or some part thereof is about to be removed or disposed of in violation of this section, the district court for the county where such property or any part thereof is located may, upon the verified application of the holder of such lien, enjoin all persons alleged in such application to be about to remove or dispose of such property or some part thereof from removing or disposing of the same.

(3) In the event such property or any part thereof shall have been removed or disposed of in violation of this section, the holder of such lien shall be entitled in any action to foreclose the same to the appointment of a receiver to take possession of such removed or disposed of property wherever the same may be located within this state.

(4) This section shall not preclude the appointment of a receiver in actions brought to foreclose liens given by this part upon any equitable grounds warranting such appointment.

History: **En. 45-1009 by Sec. 9, Ch. 143, L. 1957; R.C.M. 1947, 45-1009.**

71-3-1011. Notice to purchaser of oil and gas. Anything in this part to the contrary notwithstanding, any lien claimed by virtue of this part insofar as it may extend to oil or gas or the proceeds of the sale of oil or gas shall not be effective against any purchaser of such oil or gas until written notice of such claim has been delivered to such purchaser at his residence or principal place of business. Such notice shall state the name of the claimant, his address, the amount for which the lien is claimed, and a description of the interest upon which the lien is claimed. Such notice shall be delivered personally to the purchaser or by registered or certified letter deposited in the United States mail. Until such notice is delivered as above provided, no such purchaser shall be liable to the claimant for any oil or gas produced from the interest upon which the lien is claimed or the proceeds thereof, except to the extent of such part of the purchase price of such oil or gas or the proceeds thereof as may be owing by such purchaser at the time of delivery of such written notice. Such purchaser shall withhold payments for such oil or gas runs to the extent of the lien amount claimed until delivery of notice in writing that the claim has been paid.

History: **En. 45-1010 by Sec. 10, Ch. 143, L. 1957; R.C.M. 1947, 45-1010.**

71-3-1012. Effect on interest which is less than fee interest. If a lien provided for in this part attaches to an estate less than the fee, forfeiture of such estate shall not impair any lien as to material, appurtenances, and fixtures located thereon and to which said lien has attached prior to forfeiture. If a lien provided for in this part attaches to an equitable interest or to a legal interest contingent upon the happening of a condition subsequent, failure of such interest to ripen into legal title or such condition subsequent to be fulfilled shall not impair any lien as to material, appurtenances, and fixtures located thereon and to which said lien attached prior to such failure.

History: **En. 45-1011 by Sec. 11, Ch. 143, L. 1957; R.C.M. 1947, 45-1011(part).**

Part 11

Liens of Physicians, Nurses, and Hospitals in Personal Injury Claims

71-3-1101 through 71-3-1105. Repealed. Sec. 9, Ch. 532, L. 1979.

Compiler's Comments

Histories of Repealed Sections:

71-3-1101 through 71-3-1105. En. Sec. 1 through 5, Ch. 57, L. 1931; re-en. Sec. 8395.1 through 8395.5, R.C.M. 1935; R.C.M. 1947, 45-1201 through 45-1205.

71-3-1106 through 71-3-1110 reserved.

71-3-1111. Short title. This part may be cited as the "Physician, Nurse, and Hospital Lien Act of 1979".

History: En. Sec. 1, Ch. 532, L. 1979.

71-3-1112. Purpose. The purpose of this part is to establish lien rights for physicians, nurses, and hospitals when a person receiving medical treatment:

(1) is injured through the fault or neglect of another; or

(2) is insured.

History: En. Sec. 2, Ch. 532, L. 1979.

71-3-1113. Definitions. As used in this part, the following definitions apply:

(1) "Beneficiary" means a person entitled to insurance benefits.

(2) "Insurance" means a contract whereby a person, the insurer, undertakes to indemnify another, the insured, or pay or provide a determinable amount or benefit upon determinable contingencies.

(3) "Person" means an individual, a corporation, an organization, or other legal entity.

History: En. Sec. 3, Ch. 532, L. 1979.

71-3-1114. Liens of physicians, nurses, and hospitals. (1) Whenever a physician, nurse, or hospital renders services to a person injured through the fault or neglect of another, the physician, nurse, or hospital, upon giving the required notice of lien, has a lien for the value of services rendered on:

(a) any claim or cause of action the injured person, his estate, or successors may have for injury, disease, or death;

(b) any judgment the injured person, his estate, or successors may obtain for injury, disease, or death; and

(c) all money paid in satisfaction of such judgment or in settlement of the claim or cause of action.

(2) If a person is an insured or a beneficiary under insurance which provides coverage in the event of injury or disease, a physician, nurse, or hospital, upon giving the required notice of lien, has a lien for the value of services rendered on all proceeds or payments, except payments for property damage, payable by the insurer.

(3) The lien is subject to the lien of an attorney provided in 37-61-420.

History: En. Sec. 4, Ch. 532, L. 1979.

71-3-1115. Notice of lien. (1) A physician, nurse, or hospital claiming a lien shall serve written notice upon the person and upon his insurer, if any, against whom liability for injury, disease, or death is asserted, stating the nature of the services, for whom and when rendered, the value of the services, and that a lien is claimed.

(2) A physician, nurse, or hospital claiming a lien upon proceeds or payments payable by an insurer shall serve written notice upon the insurer against whom the lien is asserted, stating the nature of the services, for whom and when rendered, the value of the services, and that a lien is claimed.

History: **En. Sec. 5, Ch. 532, L. 1979.**

71-3-1116. Notice of lien — filing with clerk of court. If an action is commenced for recovery for injury, disease, or death, a copy of the notice of lien may be filed in the office of the clerk of court in which the action is pending, and the filing is notice to all parties to the action.

History: **En. Sec. 6, Ch. 532, L. 1979.**

71-3-1117. Liability for failure to recognize lien. If any insurer or person, after receiving notice of lien, makes payment on account of injury, disease, or death and the amount of the lien claimed by any physician, nurse, or hospital has not been paid, the insurer or person is liable to the physician, nurse, or hospital for the reasonable value of the services.

History: **En. Sec. 7, Ch. 532, L. 1979.**

71-3-1118. Applicability. (1) This part does not apply to any injury, disease, or death for which compensation is awarded pursuant to the Workers' Compensation Act or the Occupational Disease Act of Montana.

(2) This part does not apply to any benefits payable under a policy of life insurance or group life insurance, a contract of disability insurance, or an annuity contract or to pension benefits payable under a qualified pension plan.

History: **En. Sec. 8, Ch. 532, L. 1979.**

Part 12

Agisters' Liens and Liens for Service

71-3-1201. Who may have lien. (1) If there is an express or implied contract for keeping, feeding, herding, pasturing, or ranching stock, a ranchman, farmer, agister, herder, hotelkeeper, livery, or stablekeeper to whom any horses, mules, cattle, sheep, hogs, or other stock are entrusted has a lien upon such stock for the amount due for keeping, feeding, herding, pasturing, or ranching the stock and may retain possession thereof until the sum due is paid.

(2) Every person who, while lawfully in possession of an article of personal property, renders any service to the owner or lawful claimant thereof by labor or skill employed for the making, repairing, protection, improvement, safekeeping, or carriage thereof has a special lien thereon, dependent on possession, for the compensation, if any, that is due to him from the

owner or lawful claimant for such service and for material, if any, furnished in connection therewith.

History: En. Sec. 3935, Civ. C. 1895; re-en. Sec. 5805, Rev. C. 1907; amd. Sec. 1, Ch. 117, L. 1921; re-en. Sec. 8383, R.C.M. 1921; Cal. Civ. C. Sec. 3051; Based on Field Civ. C. Sec. 1696; re-en. Sec. 8383, R.C.M. 1935; amd. Sec. 11-127, Ch. 264, L. 1963; R.C.M. 1947, 45-1106(part); amd. Sec. 5, Ch. 11, L. 1979.

71-3-1202. Priority. (1) The lien hereby created shall not take precedence over perfected security interests under the Uniform Commercial Code—Secured Transactions or other recorded liens on the property involved unless within 10 days from the time of receiving the property, the person desiring to assert a lien thereon shall give notice in writing to said secured party or other lienholder, stating his intention to assert a lien on said property, under the terms of this part, and stating the nature and approximate amount of the work or feed performed or furnished or intended to be performed or furnished therefor.

(2) Such service may be made either by personal service or by mailing by registered or certified mail a copy of said notice to the secured party or other lienholder at his last known post-office address. Said service shall be deemed complete upon the deposit of the notice in the post office.

(3) Within 10 days after the date of such mailing or 5 days after such personal service, the secured party or other lienholder or his representative shall have the right to take possession of said property upon payment of the amount of the lien then accrued. A failure on the part of such secured party or other lienholder so to do shall constitute a waiver of the priority of such security interest or other lien over the lien created by this part.

History: (1), (2)En. Sec. 3935, Civ. C. 1895; re-en. Sec. 5805, Rev. C. 1907; amd. Sec. 1, Ch. 117, L. 1921; re-en. Sec. 8383, R.C.M. 1921; Cal. Civ. C. Sec. 3051; Based on Field Civ. C. Sec. 1696; re-en. Sec. 8383, R.C.M. 1935; amd. Sec. 11-127, Ch. 264, L. 1963; Sec. 45-1106, R.C.M. 1947; (3)En. Sec. 2, Ch. 117, L. 1921; re-en. Sec. 8384, R.C.M. 1921; Cal. Civ. C. Sec. 3052; re-en. Sec. 8384, R.C.M. 1935; amd. Sec. 11-128, Ch. 264, L. 1963; Sec. 45-1107, R.C.M. 1947; R.C.M. 1947, 45-1106(part), 45-1107.

71-3-1203. Enforcement of lien — sale. If payment for such work, labor, feed, or services or material furnished is not made within 30 days after the performance or furnishing of the same, the person entitled to a lien under the provisions of this section may enforce said lien in the following manner:

(1) He shall deliver to the sheriff or a constable of the county in which the property is located a statement of the amount of his claim against said property, a description of the property, and the name of the owner thereof or of the person at whose request the work, labor, or services were performed or the materials furnished.

(2) Upon receipt of such statement, the sheriff or constable shall proceed to advertise and sell at public auction so much of the property covered by said lien as will satisfy same.

(3) Such sale shall be advertised, conducted, and held in the same manner as provided by law for the sale of mortgaged personal property by sheriffs. Such notice shall be given for not less than 5 or more than 10 days prior to the date of sale.

(4) The proceeds of the sale shall be applied by the sheriff to the discharge of the lien and the cost of the proceedings in selling the property and

enforcing the lien, and the remainder, if any, or such part as is required to discharge the claims, shall be turned over by the sheriff to the holders, in the order of their precedence, of the chattel mortgages or other lien claimants of record against said property, and the balance of the proceeds shall be turned over to the owner of the property.

(5) However, before making seizure of any property under the provisions of this section, the sheriff may require an indemnity bond from the lienor in not to exceed double the amount of the claim against said property, said bond and the surety or sureties thereon to be approved by said sheriff.

History: **En. Sec. 3, Ch. 117, L. 1921; re-en. Sec. 8385, R.C.M. 1921; amd. Sec. 1, Ch. 130, L. 1927; re-en. Sec. 8385, R.C.M. 1935; R.C.M. 1947, 45-1108.**

71-3-1204. Lien not lost by fraudulent taking of property. The lien created by this part shall not be lost by reason of any forcible or fraudulent taking of the property from the possession of the person entitled to said lien, but in all such cases the person entitled to such lien shall be entitled to recover possession of the property by proper action instituted in court against any person in whose possession the property may be found.

History: **En. Sec. 4, Ch. 117, L. 1921; re-en. Sec. 8386, R.C.M. 1921; re-en. Sec. 8386, R.C.M. 1935; R.C.M. 1947, 45-1109.**

Part 13

Liens on Real Estate

71-3-1301. Lien of seller of real property — waiver. (1) One who sells real property has a vendor's lien thereon, independent of possession, for so much of the price as remains unpaid and unsecured otherwise than by the personal obligation of the buyer.

(2) Where a buyer of real property gives to the seller a written contract for payment of all or part of the price, an absolute transfer of such contract by the seller waives his lien to the extent of the sum payable under the contract; but a transfer of such contract in trust to pay debts and return the surplus is not a waiver of the lien.

History: **(1)En. Sec. 3930, Civ. C. 1895; re-en. Sec. 5800, Rev. C. 1907; re-en. Sec. 8378, R.C.M. 1921; Cal. Civ. C. Sec. 3046; Field Civ. C. Sec. 1691; re-en. Sec. 8378, R.C.M. 1935; Sec. 45-1101, R.C.M. 1947; (2)En. Sec. 3931, Civ. C. 1895; re-en. Sec. 5801, Rev. C. 1907; re-en. Sec. 8379, R.C.M. 1921; Cal. Civ. C. Sec. 3047; Based on Field Civ. C. Sec. 1692; re-en. Sec. 8379, R.C.M. 1935; Sec. 45-1102, R.C.M. 1947; R.C.M. 1947, 45-1101, 45-1102.**

71-3-1302. Purchaser's lien on real property. One who pays to the owner any part of the price of real property, under an agreement for the sale thereof, has a special lien upon the property, independent of possession, for such part of the amount paid as he may be entitled to recover back, in case of a failure of consideration.

History: **En. Sec. 3934, Civ. C. 1895; re-en. Sec. 5804, Rev. C. 1907; re-en. Sec. 8382, R.C.M. 1921; Cal. Civ. C. Sec. 3050; Field Civ. C. Sec. 1695; re-en. Sec. 8382, R.C.M. 1935; R.C.M. 1947, 45-1105.**

71-3-1303. Extent of liens. The liens defined in 71-3-1301 and 71-3-1302 are valid against everyone claiming under the debtor, except a purchaser and encumbrancer in good faith and for value.

History: **En. Sec. 3932, Civ. C. 1895; re-en. Sec. 5802, Rev. C. 1907; re-en. Sec. 8380, R.C.M. 1921; Cal. Civ. C. Sec. 3048; Field Civ. C. Sec. 1693; re-en. Sec. 8380, R.C.M. 1935; R.C.M. 1947, 45-1103.**

Part 14

Hotel Liens

71-3-1401. Lien of hotelkeepers. Hotelmen and boardinghouse and lodginghouse keepers shall have a lien upon the baggage and other property of value brought into such hotel, inn, boardinghouse, or lodginghouse by such guest or boarder or lodger for his accommodation, board, or lodging and room rent and such extras as are furnished at his request, with the right of the possession of such baggage or other property of value until all such charges are paid. Nothing herein contained shall be construed to give a lien upon property sold on the installment plan, title to which is to remain in the vendor until final payment.

History: En. Sec. 2502, Civ. C. 1895; amd. Sec. 1, p. 132, L. 1899; re-en. Sec. 5166, Rev. C. 1907; re-en. Sec. 7675, R.C.M. 1921; Cal. Civ. C. Sec. 1861; re-en. Sec. 7675, R.C.M. 1935; R.C.M. 1947, 34-103.

71-3-1402. Enforcement of lien. Any hotelkeeper or innkeeper who shall have a lien upon any of the goods, baggage, or other chattel property of his guests may, at the expiration of 6 months from the date of the departure of such guest from such hotel or inn, sell and dispose of the same at public auction and to the highest bidder for cash or so much thereof as may be necessary to pay the sum due such hotelkeeper or innkeeper, together with the cost of storage, advertisement, and sale.

History: En. Sec. 2512, Civ. C. 1895; re-en. Sec. 5175, Rev. C. 1907; re-en. Sec. 7682, R.C.M. 1921; re-en. Sec. 7682, R.C.M. 1935; R.C.M. 1947, 34-110.

71-3-1403. Notice of sale. Before proceeding to the sale of the property of any guest, as provided in 71-3-1402, such hotelkeeper or innkeeper shall cause a notice of such sale, containing a description of the property to be sold and the time and place where such property will be sold, to be published once each week for 2 successive weeks in a newspaper published in the city or town in which such hotel or inn is situated but, if there be none, then in some newspaper published nearest such town or city and in case any balance arising from such sale shall not be claimed by the rightful owner within 30 days from the day of such sale, the same shall be paid into the treasury of the county in which such sale took place. If such balance be not claimed by the owner thereof or his legal representatives within 1 year thereafter, the same shall be paid into the school fund of such county.

History: En. Sec. 2513, Civ. C. 1895; re-en. Sec. 5176, Rev. C. 1907; re-en. Sec. 7683, R.C.M. 1921; re-en. Sec. 7683, R.C.M. 1935; R.C.M. 1947, 34-111.

Part 15

Miscellaneous Liens

71-3-1501. Lien of factor. A factor has a general lien, dependent on possession, for all that is due to him as such, upon all articles of commercial value that are entrusted to him by the same principal.

History: En. Sec. 3936, Civ. C. 1895; re-en. Sec. 5806, Rev. C. 1907; re-en. Sec. 8387, R.C.M. 1921; Cal. Civ. C. Sec. 3053; Field Civ. C. Sec. 1697; re-en. Sec. 8387, R.C.M. 1935; R.C.M. 1947, 45-1110.

71-3-1502. Banker's lien. A banker has a general lien, dependent on possession, upon all property in his hands belonging to a customer, for the balance due to him from such customer in the course of the business.

History: En. Sec. 3937, Civ. C. 1895; re-en. Sec. 5807, Rev. C. 1907; re-en. Sec. 8388, R.C.M. 1921; Cal. Civ. C. Sec. 3054; Field Civ. C. Sec. 1698; re-en. Sec. 8388, R.C.M. 1935; R.C.M. 1947, 45-1111.

71-3-1503. Officer's lien. An officer who levies an attachment or execution upon personal property acquires a special lien, dependent on possession, upon such property, which authorizes him to hold it until the process is discharged or satisfied or a judicial sale of the property is had.

History: En. Sec. 3940, Civ. C. 1895; re-en. Sec. 5810, Rev. C. 1907; re-en. Sec. 8391, R.C.M. 1921; Cal. Civ. C. Sec. 3057; Field Civ. C. Sec. 1701; re-en. Sec. 8391, R.C.M. 1935; R.C.M. 1947, 45-1114.

71-3-1504. Judgment lien. The lien of a judgment is regulated by Title 25.

History: En. Sec. 3941, Civ. C. 1895; re-en. Sec. 5811, Rev. C. 1907; re-en. Sec. 8392, R.C.M. 1921; Cal. Civ. C. Sec. 3058; Field Civ. C. Sec. 1703; re-en. Sec. 8392, R.C.M. 1935; R.C.M. 1947, 45-1115.

71-3-1505. Lien for rental on frozen food compartments. A person who operates a frozen food plant which offers individual compartments to the public has a lien on the property in his possession for rentals or other charges due. Liens may be foreclosed in the same way provided for chattel mortgages.

History: En. Sec. 13, Ch. 17, L. 1967; R.C.M. 1947, 27-623.

TITLE 72

ESTATES, TRUSTS, AND FIDUCIARY RELATIONSHIPS

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1. Uniform Probate Code — General Provisions.
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3. UPC — Probate and Administration.
4. UPC — Foreign Personal Representatives and Ancillary Administration.
5. UPC — Persons Under Disability — Guardianship and Conservatorship.
Chapters 6 through 9 reserved.
10. Supplementary General Provisions on Probate and Succession.
11. Intestate Succession and Wills — Supplementary Provisions.
12. Probate and Administration — Supplementary Provisions.
13. Persons Under Disability — Supplementary Provisions.
14. Escheated Estates.
15. Public Administrator.
16. Inheritance and Estate Taxes.
17. Anatomical Gift Act.
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20. Trusts in General.
21. Trustees' Powers Act.
22. Conveyance of Trust Property by Court Order.
23. Trusts for Benefit of Third Persons.
24. Trusts in Relation to Real Property.
25. Uniform Principal and Income Act.
26. Uniform Gifts to Minors Act.
27. Miscellaneous Provisions Relating to Trusts.
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CHAPTER 1

UNIFORM PROBATE CODE GENERAL PROVISIONS

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Part 1

Short Title, Definitions, Construction, and General Provisions

72-1-101. Short title. Chapters 1 through 5 and chapter 16, part 6, shall be known and may be cited as the "Uniform Probate Code".

History: En. 91A-1-101 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-1-101.

72-1-102. Purposes — liberal construction. (1) This code shall be liberally construed and applied to promote its underlying purposes and policies.

(2) The underlying purposes and policies of this code are to:

(a) simplify and clarify the law concerning the affairs of decedents, missing persons, protected persons, minors, and incapacitated persons;

(b) discover and make effective the intent of a decedent in distribution of his property;

(c) promote a speedy and efficient system for liquidating the estate of the decedent and making distribution to its successors;

(d) make uniform the law among the various jurisdictions.

History: En. 91A-1-102 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-1-102.

72-1-103. General definitions. Subject to additional definitions contained in the subsequent chapters which are applicable to specific chapters or parts and unless the context otherwise requires, in this code the following definitions apply:

(1) "Application" means a written request to the clerk for an order of informal probate or appointment under chapter 3, part 2.

(2) "Beneficiary", as it relates to trust beneficiaries, includes a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer and, as it relates to a charitable trust, includes any person entitled to enforce the trust.

(3) "Child" includes any individual entitled to take as a child under this code by intestate succession from the parent whose relationship is involved.

(4) "Claims", in respect to estates of decedents and protected persons, includes liabilities of the decedent or protected person, whether arising in contract, in tort, or otherwise, and liabilities of the estate which arise at or after the death of the decedent or after the appointment of a conservator, including funeral expenses and expenses of administration. The term does not include estate or inheritance taxes, demands or disputes regarding title of a decedent or protected person to specific assets alleged to be included in the estate.

(5) "Clerk" or "clerk of court" means the clerk of the district court.

(6) "Conservator" means a person who is appointed by a court to manage the estate of a protected person.

(7) "Court" means the court having jurisdiction in matters relating to the affairs of decedents. This court in this state is known as district court.

(8) "Devise" when used as a noun means a testamentary disposition of real or personal property and when used as a verb means to dispose of real or personal property by will.

(9) "Devisee" means any person designated in a will to receive a devise. In the case of a devise to an existing trust or trustee or to a trustee on trust described by will, the trust or trustee is the devisee and the beneficiaries are not devisees.

(10) "Disability" means cause for a protective order as described by 72-5-409.

(11) "Distributee" means any person who has received property of a decedent from his personal representative other than as a creditor or purchaser. A testamentary trustee is a distributee only to the extent of distributed assets or increment thereto remaining in his hands. A beneficiary of a testamentary trust to whom the trustee has distributed property received from a personal representative is a distributee of the personal representative. For purposes of this provision, "testamentary trustee" includes a trustee to whom assets are transferred by will, to the extent of the devised assets.

(12) "Estate" includes the property of the decedent, trust, or other person whose affairs are subject to this code as originally constituted and as it exists from time to time during administration.

(13) "Exempt property" means that property of a decedent's estate which is described in 72-2-802.

(14) "Fiduciary" includes personal representative, guardian, conservator, and trustee.

(15) "Foreign personal representative" means a personal representative of another jurisdiction.

(16) "Formal proceedings" means those conducted before a judge with notice to interested persons.

(17) "Guardian" means a person who has qualified as a guardian of a minor or incapacitated person pursuant to testamentary or court appointment but excludes one who is merely a guardian ad litem.

(18) "Heirs" means those persons, including the surviving spouse, who are entitled under the statutes of intestate succession to the property of a decedent.

(19) "Incapacitated person" is as defined in 72-5-101.

(20) "Informal proceedings" means those conducted without notice to interested persons by the clerk of court for probate of a will or appointment of a personal representative.

(21) "Interested person" includes heirs, devisees, children, spouses, creditors, beneficiaries, and any others having a property right in or claim against a trust estate or the estate of a decedent, ward, or protected person which may be affected by the proceeding. It also includes persons having priority for appointment as personal representative and other fiduciaries representing interested persons. The meaning as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of and matter involved in any proceeding.

(22) "Issue" of a person means all his lineal descendants of all generations, with the relationship of parent and child at each generation being determined by the definitions of child and parent contained in this code.

(23) "Lease" includes an oil, gas, coal, or other mineral lease.

(24) "Letters" includes letters testamentary, letters of guardianship, letters of administration, and letters of conservatorship.

(25) "Minor" means a person who is under 18 years of age.

(26) "Mortgage" means any conveyance, agreement, or arrangement in which property is used as security.

(27) "Nonresident decedent" means a decedent who was domiciled in another jurisdiction at the time of his death.

(28) "Organization" includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal entity.

(29) "Parent" includes any person entitled to take, or who would be entitled to take if the child died without a will, as a parent under this code by intestate succession from the child whose relationship is in question.

(30) "Person" means an individual, a corporation, an organization, or other legal entity.

(31) "Personal representative" includes executor, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status. "General personal representative" excludes special administrator.

(32) "Petition" means a written request to the court for an order after notice.

(33) "Proceeding" includes action at law and suit in equity.

(34) "Property" includes both real and personal property or any interest therein and means anything that may be the subject of ownership.

(35) "Protected person" is as defined in 72-5-101.

(36) "Protective proceeding" is as defined in 72-5-101.

(37) "Securities" includes any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease, collateral trust certificate, transferable share, voting trust certificate or, in general, any interest or instrument commonly known as a security or any certificate of interest or participation, any temporary or interim certificate, receipt or certificate of deposit for, or any warrant or right to subscribe to or purchase any of the foregoing.

(38) "Settlement", in reference to a decedent's estate, includes the full process of administration, distribution, and closing.

(39) "Special administrator" means a personal representative as described by chapter 3, part 7.

(40) "State" includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.

(41) "Successor personal representative" means a personal representative, other than a special administrator, who is appointed to succeed a previously appointed personal representative.

(42) "Successors" means those persons, other than creditors, who are entitled to property of a decedent under his will or this code.

(43) "Supervised administration" refers to the proceedings described in chapter 3, part 4.

(44) "Testacy proceeding" means a proceeding to establish a will or determine intestacy.

(45) "Trust" includes any express trust, private or charitable, with additions thereto, wherever and however created. It also includes a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. "Trust" excludes other constructive trusts, and it excludes resulting trusts, conservatorships, personal representatives, custodial arrangements pursuant to chapter 26 of this title, business trusts providing for certificates to be issued to beneficiaries, common trust funds, voting trusts, security arrangements, liquidation trusts, and trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind and any arrangement under which a person is nominee or escrowee for another.

(46) "Trustee" includes an original, additional, or successor trustee, whether or not appointed or confirmed by court.

(47) "Ward" is as defined in 72-5-101.

(48) "Will" includes codicil and any testamentary instrument which merely appoints an executor or revokes or revises another will.

History: En. 91A-1-201 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-1-201.

72-1-104. Supplementary general principles of law applicable. Unless displaced by the particular provisions of this code, the principles of law and equity supplement its provisions.

History: En. 91A-1-103 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-1-103.

72-1-105. Construction against implied repeal. This code is a general act intended as a unified coverage of its subject matter, and no part of it shall be deemed impliedly repealed by subsequent legislation if it can reasonably be avoided.

History: En. 91A-1-105 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-1-105.

72-1-106. Uniform Probate Code to take precedence. Should any provision of this code conflict with any provisions of other statutes of the state of Montana relating to probate, guardianship, or other subjects incorporated in this code and such other statute or statutes was or were adopted prior to the enactment of this code, the provisions of this code shall be deemed to be controlling.

History: En. 91A-6-104 by Sec. 19, Ch. 365, L. 1974; R.C.M. 1947, 91A-6-104.

72-1-107. Effective date — applicability. (1) This code takes effect on July 1, 1975.

(2) Except as provided elsewhere in this code, on July 1, 1975:

(a) the code applies to any wills of decedents dying thereafter;

(b) the code applies to any proceedings in court then pending or thereafter commenced regardless of the time of the death of decedent, except to the extent that in the opinion of the court the former procedure should be made applicable in a particular case in the interest of justice or because of infeasibility of application of the procedure of this code;

(c) every personal representative, including a person administering an estate of a minor or incompetent holding an appointment on that date, continues to hold the appointment but has only the powers conferred by this code and is subject to the duties imposed with respect to any act occurring or done thereafter;

(d) an act done before July 1, 1975, in any proceeding and any accrued right are not impaired by this code. If a right is acquired, extinguished, or barred upon the expiration of a prescribed period of time which has commenced to run by the provisions of any statute before July 1, 1975, the provisions shall remain in force with respect to that right.

(e) any rule of construction or presumption provided in this code applies to instruments executed and multiple-party accounts opened before July 1, 1975, unless there is a clear indication of a contrary intent.

History: En. 91A-6-102 by Sec. 3, Ch. 365, L. 1974; R.C.M. 1947, 91A-6-102.

72-1-108. Evidential rules applicable — evidence as to death or status. (1) In proceedings under this code the rules of evidence in courts of general jurisdiction, including any relating to simultaneous deaths, are applicable unless specifically displaced by the code.

(2) In addition, the following rules relating to determination of death and status are applicable:

(a) A certified or authenticated copy of a death certificate purporting to be issued by an official or agency of the place where the death purportedly occurred is prima facie proof of the fact, place, date, and time of death and the identity of the decedent.

(b) A certified or authenticated copy of any record or report of a governmental agency, domestic or foreign, that a person is missing, detained, dead, or alive is prima facie evidence of the status and of the dates, circumstances, and places disclosed by the record or report.

(c) A person who is absent for a continuous period of 7 years, during which he has not been heard from, and whose absence is not satisfactorily explained after diligent search or inquiry is presumed to be dead. His death is presumed to have occurred at the end of the period unless there is sufficient evidence for determining that death occurred earlier.

History: En. 91A-1-107 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-1-107.

72-1-109. Acts by holder of general power. For the purpose of granting consent or approval with regard to the acts or accounts of a personal representative, including relief from liability or penalty for failure to post bond, or to perform other duties, the sole holder or all coholders of a presently exercisable general power of appointment, including one in the form of a power of amendment or revocation, are deemed to act for beneficiaries to the extent their interests (as objects, takers in default, or otherwise) are subject to the power.

History: En. 91A-1-108 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-1-108.

72-1-110. Instruments not invalidated by code. (1) Any of the following provisions in an insurance policy, contract of employment, bond, mortgage, promissory note, deposit agreement, pension plan, trust agreement, conveyance, or any other written instrument effective as a contract, gift, conveyance, or trust is deemed to be nontestamentary, and this code does not invalidate the instrument or any provision:

(a) that money or other benefits theretofore due to, controlled or owned by a decedent shall be paid after his death to a person designated by the decedent in either the instrument or a separate writing, including a will, executed at the same time as the instrument or subsequently;

(b) that any money due or to become due under the instrument shall cease to be payable in event of the death of the promisee or the promissor before payment or demand; or

(c) that any property which is the subject of the instrument shall pass to a person designated by the decedent in either the instrument or a separate writing, including a will, executed at the same time as the instrument or subsequently.

(2) Nothing in this section limits the rights of creditors under other laws of this state.

History: En. 91A-6-101 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-6-101.

72-1-111. Remedies for fraud — statute of limitations. (1) Whenever fraud has been perpetrated in connection with any proceeding or in any statement filed under this code or if fraud is used to avoid or circumvent the provisions or purposes of this code, any person injured thereby may obtain appropriate relief including restitution against the perpetrator of the fraud or any person benefiting from the fraud, whether innocent or not (other than a bona fide purchaser for value and without notice).

(2) Any proceeding must be commenced within 2 years after the discovery of the fraud, but no proceeding may be brought against one not a perpetrator of the fraud later than 5 years after the time of commission of the fraud.

(3) This section has no bearing on remedies relating to fraud practiced on a decedent during his lifetime which affects the succession of his estate.

History: En. 91A-1-106 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-1-106.

Part 2

Scope, Jurisdiction, and Courts

72-1-201. Territorial application. Except as otherwise provided in this code, this code applies to:

(1) the affairs and estates of decedents, missing persons, and persons to be protected in this state;

(2) the property of nonresidents located in this state or property coming into the control of a fiduciary who is subject to the laws of this state; and

(3) incapacitated persons and minors in this state.

History: **En. 91A-1-301 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-1-301.**

72-1-202. Subject matter jurisdiction. (1) To the full extent permitted by the constitution, the court has jurisdiction over all subject matter relating to:

(a) estates of decedents, including construction of wills and determination of heirs and successors of decedents, and estates of protected persons; and

(b) protection of minors and incapacitated persons.

(2) The court has full power to make orders, judgments, and decrees and take all other action necessary and proper to administer justice in the matters which come before it.

History: **En. 91A-1-302 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-1-302.**

72-1-203. Venue — multiple proceedings — transfer. (1) Where venue for a proceeding under this code may lie in more than one county in the state, the court in which the proceeding is first commenced has the exclusive right to proceed.

(2) If proceedings concerning the same estate, protected person, ward, or trust are commenced in more than one court of this state, the court in which the proceeding was first commenced shall continue to hear the matter, and the other courts shall hold the matter in abeyance until the question of venue is decided, and if the ruling court determines that venue is properly in another court, it shall transfer the proceeding to the other court.

(3) If a court finds that, as a matter of law or in the interest of justice, a proceeding or a file should be located in another court of this state, the court making the finding may transfer the proceeding or file to the other court.

History: **En. 91A-1-303 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-1-303.**

72-1-204. Records and certified copies. (1) The clerk of court shall keep a record for each decedent, ward, protected person, or trust involved in any document which may be filed with the court under this code, including petitions and applications, demands for notices or bonds, and of any orders or responses relating thereto by the clerk or court and establish and maintain a system for indexing, filing, or recording which is sufficient to enable users of the records to obtain adequate information.

(2) Upon payment of the fees required by law, the clerk must issue certified copies of any probated wills, letters issued to personal representatives, or any other record or paper filed or recorded.

(3) Certificates relating to probated wills must indicate whether the decedent was domiciled in this state and whether the probate was formal or informal. Certificates relating to letters must show the date of appointment.

History: **En. 91A-1-305 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-1-305.**

72-1-205. Powers of clerk — performable by clerk or court. The acts and orders which this code specifies as performable by the clerk of court may be performed either by a judge of the court or by the clerk of court.

History: En. 91A-1-307 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-1-307.

72-1-206. Oath or affirmation on filed documents. Except as otherwise specifically provided in this code or by rule, every document filed with the court under this code, including applications, petitions, and demands for notice, shall be deemed to include an oath, affirmation, or statement to the effect that its representations are true as far as the person executing or filing it knows or is informed; deliberate falsification therein shall constitute the offense of false swearing.

History: En. 91A-1-309 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-1-309.

72-1-207. Rules of civil procedure to apply. Unless specifically provided to the contrary in this code or unless inconsistent with its provisions, the rules of civil procedure, including the rules concerning vacation of orders and appellate review, govern formal proceedings under this code.

History: En. 91A-1-304 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-1-304.

72-1-208. Jury trial. (1) If duly demanded, a party is entitled to trial by jury in a formal testacy proceeding, a formal proceeding for determination of heirship, and any other proceeding as may be provided for by law.

(2) If there is no right to trial by jury under subsection (1) or the right is waived, the court in its discretion may call a jury to decide any issue of fact, in which case the verdict is advisory only.

History: En. 91A-1-306 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-1-306.

72-1-209. Appeals. Appellate review, including the right to appellate review, interlocutory appeal, provisions as to time, manner, notice, appeal bond, stays, scope of review, record on appeal, briefs, arguments, and power of the appellate court, is governed by the statutes and rules applicable to the appeals to the supreme court.

History: En. 91A-1-308 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-1-308.

Part 3

Notices, Parties, and Representation Generally

72-1-301. Notice — method and time of giving. (1) If notice of a hearing on any petition is required and except for specific notice requirements as otherwise provided, the petitioner shall cause notice of the time and place of hearing of any petition to be given to any interested person or his attorney if he has appeared by attorney or requested that notice be sent to his attorney. Notice shall be given:

(a) by mailing a copy thereof at least 14 days before the time set for the hearing by certified, registered, or ordinary first-class mail addressed to the person being notified at the post-office address given in his demand for notice, if any, or at his office or place of residence, if known;

(b) by delivering a copy thereof to the person being notified personally at least 14 days before the time set for the hearing; or

(c) if the address or identity of any person is not known and cannot be ascertained with reasonable diligence, by publishing in a weekly paper once a week for 3 consecutive weeks and, if in a newspaper published more often than once a week, by publishing on at least 3 different days of publication, and it shall be so published that there must be at least 10 days from the first to the last day of publication, both the first and last day being included.

(2) The court for good cause shown may provide for a different method or time of giving notice for any hearing.

(3) Proof of the giving of notice shall be made on or before the hearing and filed in the proceeding.

History: En. 91A-1-401 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 1, Ch. 516, L. 1975; R.C.M. 1947, 91A-1-401.

72-1-302. Waiver of notice. A person, including a guardian ad litem, conservator, or other fiduciary, may waive notice by a writing signed by him or his attorney and filed in the proceeding.

History: En. 91A-1-402 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-1-402.

72-1-303. Pleadings — when orders or notice binding one binds another — representation. In formal proceedings involving trusts or estates of decedents, minors, protected persons, or incapacitated persons and in judicially supervised settlements, the following apply:

(1) Interests to be affected shall be described in pleadings which give reasonable information to owners by name or class, by reference to the instrument creating the interests, or in other appropriate manner.

(2) Persons are bound by orders binding others in the following cases:

(a) Orders binding the sole holder or all coholders of a power of revocation or a presently exercisable general power of appointment, including one in the form of a power of amendment, bind other persons to the extent their interests (as objects, takers in default, or otherwise) are subject to the power.

(b) To the extent there is no conflict of interest between them or among persons represented, orders binding a conservator bind the person whose estate he controls; orders binding a guardian bind the ward if no conservator of his estate has been appointed; orders binding a trustee bind beneficiaries of the trust in proceedings to probate a will establishing or adding to a trust, to review the acts or accounts of a prior fiduciary, and in proceedings involving creditors or other third parties; and orders binding a personal representative bind persons interested in the undistributed assets of a decedent's estate in actions or proceedings by or against the estate. If there is no conflict of interest and no conservator or guardian has been appointed, a parent may represent his minor child.

(c) An unborn or unascertained person who is not otherwise represented is bound by an order to the extent his interest is adequately represented by another party having a substantially identical interest in the proceeding.

(3) Notice is required as follows:

(a) Notice as prescribed by 72-1-301 shall be given to every interested person or to one who can bind an interested person as described in (2)(a) or (2)(b) above. Notice may be given both to a person and to another who may bind him.

(b) Notice is given to unborn or unascertained persons, who are not represented under (2)(a) or (2)(b) above, by giving notice to all known persons whose interests in the proceedings are substantially identical to those of the unborn or unascertained persons.

(4) At any point in a proceeding, a court may appoint a guardian ad litem to represent the interest of a minor, an incapacitated, unborn, or unascertained person, or a person whose identity or address is unknown, if the court determines that representation of the interest otherwise would be inadequate. If not precluded by conflict of interests, a guardian ad litem may be appointed to represent several persons or interests. The court shall set out its reasons for appointing a guardian ad litem as a part of the record of the proceeding.

History: **En. 91A-1-403 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-1-403.**

CHAPTER 2

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Part 1

General Provisions

72-2-101. Renunciation of succession. (1) A person or his personal representative or the representative of an incapacitated or protected person who is an heir, devisee, person succeeding to a renounced interest, beneficiary under a testamentary instrument, or appointee under a power of appointment exercised by a testamentary instrument may renounce, in whole or in part, the right of succession to any property or interest therein, including a future interest, by filing a written renunciation under this section. The instrument shall:

(a) describe the property or interest renounced;

(b) be signed by the person renouncing; and

(c) declare the renunciation and the extent thereof.

(2) (a) An instrument renouncing a present interest shall be filed within 9 months after the death of the decedent or the donee of the power.

(b) An instrument renouncing a future interest may be filed not later than 9 months after the event determining that the taker of the property or interest is finally ascertained and his interest is indefeasibly vested.

(c) The renunciation must be filed in the court of the county in which proceedings have been commenced for the administration of the estate of the deceased owner or deceased donee of the power or, if they have not been commenced, in which they could be commenced. A copy of the renunciation shall be delivered in person or mailed by registered or certified mail to any personal representative or other fiduciary of the decedent or donee of the power. If real property or an interest therein is renounced, a copy of the renunciation may be recorded in the office of the county clerk of the county in which the real estate is situated.

(3) Unless the decedent or donee of the power has otherwise provided, the property or interest renounced devolves as though the person renouncing had predeceased the decedent or, if the appointment was exercised by a testamentary instrument, as though the person renouncing had predeceased the donee of the power. A future interest that takes effect in possession or enjoyment after the termination of the estate or interest renounced takes effect as though the person renouncing had predeceased the decedent or the donee of the power. A renunciation relates back for all purposes to the date of the death of the decedent or the donee of the power.

(4) (a) The right to renounce property or an interest therein is barred by:

(i) an assignment, conveyance, encumbrance, pledge, or transfer of property or interest, or a contract therefor;

(ii) a written waiver of the right to renounce;

(iii) an acceptance of the property or interest or benefit thereunder; or

(iv) a sale of the property or interest under judicial sale made before the renunciation is effected.

(b) The right to renounce exists notwithstanding any limitation on the interest of the person renouncing in the nature of a spendthrift provision or similar restriction.

(c) A renunciation or a written waiver of the right to renounce is binding upon the person renouncing or person waiving and all persons claiming through or under him.

(5) This section does not abridge the right of a person to waive, release, disclaim, or renounce property or an interest therein under any other statute.

(6) An interest in property which exists on July 1, 1975, as to which, if a present interest, the time for filing a renunciation under the Uniform Probate Code has not expired, or if a future interest, the interest has not become

indefeasibly vested or the taker finally ascertained, may be renounced within 9 months after July 1, 1975.

History: **En. 91A-2-801 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-801; amd. Sec. 1, Ch. 52, L. 1981.**

Compiler's Comments

1981 Amendment: Generally revised this section. The title to Ch. 52, L. 1981 (SB 38), read: "An act to revise Montana's probate code with respect to renunciation of succession, intestate succession, establishing the parent-child relationship, the augmented estate, the elective share of the surviving spouse, statute of limitations, self-proved wills, and foreign personal representatives by generally adopting the language of the Uniform Probate Code; amending sections 72-2-101, 72-2-203, 72-2-213, 72-2-304, 72-2-705, 72-2-706, 72-2-707, 72-3-907, 72-3-1005, 72-3-1006, 72-4-201, 72-4-301, 72-4-306, and 72-4-308, MCA; and repealing section 72-3-608, MCA."

72-2-102. Waiver of rights by spouse. The right of election of a surviving spouse and the rights of the surviving spouse to homestead allowance, exempt property, and family allowance or any of them may be waived, wholly or partially, before or after marriage, by a written contract, agreement, or waiver signed by the party waiving after fair disclosure. Unless it provides to the contrary, a waiver of "all rights" (or equivalent language) in the property or estate of a present or prospective spouse or a complete property settlement entered into after or in anticipation of separation or divorce is a waiver of all rights to elective share, homestead allowance, exempt property, and family allowance by each spouse in the property of the other and a renunciation by each of all benefits which would otherwise pass to him from the other by intestate succession or by virtue of the provisions of any will executed before the waiver or property settlement.

History: **En. 91A-2-204 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-204.**

72-2-103. Effect of divorce, annulment, or separation decree. (1) A person who is divorced from the decedent or whose marriage to the decedent has been annulled is not a surviving spouse unless by virtue of a subsequent marriage he is married to the decedent at the time of death. A decree of separation which does not terminate the status of husband and wife is not a divorce for purposes of this section.

(2) For purposes of chapter 2, parts 2, 6, 7, and 8 and of 72-3-501 through 72-3-508, a surviving spouse does not include:

(a) a person who obtains or consents to a final decree or judgment of divorce from the decedent or an annulment of their marriage, which decree or judgment is not recognized as valid in this state, unless they subsequently participate in a marriage ceremony purporting to marry each to the other or subsequently live together as man and wife;

(b) a person who, following a decree or judgment of divorce or annulment obtained by the decedent, participates in a marriage ceremony with a third person; or

(c) a person who was a party to a valid proceeding concluded by an order purporting to terminate all marital property rights.

History: **En. 91A-2-802 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-802.**

72-2-104. Homicide — effect on intestate succession, wills, joint assets, life insurance, and beneficiary designations. (1) A surviving spouse, heir, or devisee who feloniously and intentionally kills the decedent is not entitled to any benefits under the will or under this chapter, and the estate of decedent passes as if the killer had predeceased the decedent. Property appointed by the will of the decedent to or for the benefit of the killer passes as if the killer had predeceased the decedent.

(2) Any joint tenant who feloniously and intentionally kills another joint tenant thereby effects a severance of the interest of the decedent so that the share of the decedent passes as his property and the killer has no rights by survivorship. This provision applies to joint tenancies in real and personal property, joint accounts in banks, savings and loan associations, credit unions, and other institutions, and any other form of co-ownership with survivorship incidents.

(3) A named beneficiary of a bond, life insurance policy, or other contractual arrangement who feloniously and intentionally kills the principal obligee or the person upon whose life the policy is issued is not entitled to any benefit under the bond, policy, or other contractual arrangement, and it becomes payable as though the killer had predeceased the decedent.

(4) Any other acquisition of property or interest by the killer shall be treated in accordance with the principles of this section.

(5) A final judgment of conviction of felonious and intentional killing is conclusive for purposes of this section. In the absence of a conviction of felonious and intentional killing, the court may determine by a preponderance of evidence whether the killing was felonious and intentional for purposes of this section.

(6) This section does not affect the rights of any person who, before rights under this section have been adjudicated, purchases from the killer for value and without notice property which the killer would have acquired except for this section, but the killer is liable for the amount of the proceeds or the value of the property. Any insurance company, bank, or other obligor making payment according to the terms of its policy or obligation is not liable by reason of this section unless prior to payment it has received at its home office or principal address written notice of a claim under this section.

History: En. 91A-2-803 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-803.

72-2-105. Contracts concerning succession. (1) A contract to make a will or devise or not to revoke a will or devise or to die intestate, if executed after July 1, 1975, can be established only by:

(a) provisions of a will stating material provisions of the contract;

(b) an express reference in a will to a contract and extrinsic evidence proving the terms of the contract; or

(c) a writing signed by the decedent evidencing the contract.

(2) The execution of a joint will or mutual wills does not create a presumption of a contract not to revoke the will or wills.

History: En. 91A-2-701 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-701.

Part 2

Intestate Succession

72-2-201. Intestate estate. Any part of the estate of a decedent not effectively disposed of by his will passes to his heirs as prescribed in the following sections of this code.

History: En. 91A-2-101 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-101.

72-2-202. Share of spouse. The intestate share of the surviving spouse is:

(1) if there is no surviving issue or if there are surviving issue all of whom are issue of the surviving spouse also, the entire remaining estate;

(2) if there are surviving issue one or more of whom are not issue of the surviving spouse, as follows:

(a) if there is surviving only one such child or the issue of one such child, one-half of the intestate estate;

(b) if there are surviving more than one such child or one such child and the issue of one or more deceased children, one-third of the intestate estate.

History: En. 91A-2-102 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 1, Ch. 363, L. 1975; R.C.M. 1947, 91A-2-102.

72-2-203. Share of heirs other than surviving spouse. The part of the intestate estate not passing to the surviving spouse under 72-2-202, or the entire intestate estate if there is no surviving spouse, passes as follows:

(1) to the issue of the decedent; if they are all of the same degree of kinship to the decedent, they take equally, but if of unequal degree, then those of more remote degree take by representation;

(2) if there is no surviving issue, to his parent or parents equally;

(3) if there is no surviving issue or parent, to the brothers and sisters and the children or grandchildren of any deceased brother or sister, by representation;

(4) if there is no surviving issue, parent, brother, sister, or children or grandchildren of a deceased brother or sister, to the next of kin in equal degree, except that where there are two or more collateral kindred in equal degree but claiming through different ancestors, those who claim through the nearer ancestors must be preferred to those claiming through an ancestor more remote.

History: En. 91A-2-103 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 2, Ch. 363, L. 1975; R.C.M. 1947, 91A-2-103; amd. Sec. 2, Ch. 52, L. 1981.

Compiler's Comments

1981 Amendment: Deleted former subsection (2) concerning inheritance from a child that dies under age not having been married.

72-2-204. Representation. If representation is called for by this code, the estate is divided into as many shares as there are surviving heirs in the nearest degree of kinship and deceased persons in the same degree who left issue who survive the decedent, each surviving heir in the nearest degree receiving one share and the share of each deceased person in the same degree being divided among his issue in the same manner.

History: En. 91A-2-106 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-106.

72-2-205. Requirement that heir survive decedent by one hundred twenty hours. Any person who fails to survive the decedent by 120 hours is deemed to have predeceased the decedent for purposes of homestead allowance, exempt property, and intestate succession, and the decedent's heirs are determined accordingly. If the time of death of the decedent or of the person who would otherwise be an heir or the times of death of both cannot be determined and it cannot be established that the person who would otherwise be an heir has survived the decedent by 120 hours, it is deemed that the person failed to survive for the required period. This section is not to be applied where its application would result in a taking of intestate estate by the state under 72-2-207.

History: **En. 91A-2-104 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-104.**

72-2-206. Advancements. If a person dies intestate as to all his estate, property which he gave in his lifetime to an heir is treated as an advancement against the latter's share of the estate only if declared in a contemporaneous writing by the decedent or acknowledged in writing by the heir to be an advancement. For this purpose, the property advanced is valued as of the time the heir came into possession or enjoyment of the property or as of the time of death of the decedent, whichever first occurs. If the recipient of the property fails to survive the decedent, the property is not taken into account in computing the intestate share to be received by the recipient's issue unless the declaration or acknowledgment provides otherwise.

History: **En. 91A-2-110 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-110.**

72-2-207. No taker — escheat to state. If there is no taker under the provisions of 72-2-202 and 72-2-203, the intestate estate passes to the state of Montana.

History: **En. 91A-2-105 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-105.**

72-2-208 and 72-2-209 reserved.

72-2-210. Persons related to decedent through two lines. A person who is related to the decedent through two lines of relationship is entitled to only a single share based on the relationship that would entitle him to the larger share.

History: **En. Sec. 4, Ch. 52, L. 1981.**

Compiler's Comments

Codification Instruction: Subsection (1), sec. 17, Ch. 52, L. 1981, read: "(1) Sections 4 [72-2-210] and 16 [72-4-309] are intended to be codified as an integral part of Title 72, chapters 1 through 5 and chapter 16, part 6. The provisions of Title 72, chapters 1 through 5 and chapter 16, part 6, apply to sections 4 and 16."

72-2-211. Kindred of half blood. Relatives of the half blood inherit the same share they would inherit if they were of the whole blood.

History: **En. 91A-2-107 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-107.**

72-2-212. Afterborn heirs. Relatives of the decedent conceived before his death but born thereafter inherit as if they had been born in the lifetime of the decedent.

History: **En. 91A-2-108 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-108.**

72-2-213. Establishment of parent-child relationship. If, for the purposes of intestate succession, a relationship of parent and child must be established to determine succession by, through, or from a person:

(1) An adopted person is the child of an adopting parent and not of the natural parents, except that adoption of a child by the spouse of a natural parent has no effect on the relationship between the child and either natural parent.

(2) In cases not covered by subsection (1), a person is the child of its parents regardless of the marital status of its parents, and the parent and child relationship may be established under the Uniform Parentage Act, Title 40, chapter 6, part 1.

History: En. 91A-2-109 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-109; amd. Sec. 3, Ch. 52, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "is the child of" for "shall inherit as the child of" and added the final phrase in (1) beginning with "and not of the natural parents . . ."; substituted the language now in (2) for language concerning an attempted marriage ceremony by natural parents or adjudication of paternity and open treatment and support of a child by the father.

72-2-214. Alienage. No person is disqualified to take as an heir because he or a person through whom he claims is an alien unless the country in which he resides does not allow reciprocity.

History: En. 91A-2-111 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-111.

72-2-215. Reporting duty of personal representative in estate involving alien heir. In any estate where money or property does not vest in any alien person because of the provisions of 72-2-214, it shall be the duty of the personal representative or special administrator, within 30 days of having completed and filed the inventory and statement of value, to furnish the attorney general with the following written information and file a copy in the probate proceedings:

(1) the names and addresses of the alien heirs, devisees, legatees, or beneficiaries in the estate;

(2) the share or proportionate share of each of the alien heirs;

(3) the stated value of the entire estate.

History: En. 91A-2-112 by Sec. 1, Ch. 370, L. 1977; R.C.M. 1947, 91A-2-111.1.

Part 3

Wills — Execution, Addendums, and Revocation

72-2-301. Who may make a will. Any person 18 or more years of age who is of sound mind may make a will.

History: En. 91A-2-501 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-501.

72-2-302. Execution. Except as provided for holographic wills, writings within 72-2-312, and wills within 72-2-306, every will shall be in writing signed by the testator or in the testator's name by some other person in the testator's presence and by his direction and shall be signed by at least two persons each of whom witnessed either the signing or the testator's acknowledgment of the signature or of the will.

History: En. 91A-2-502 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-502.

72-2-303. Holographic will. A will which does not comply with 72-2-302 is valid as a holographic will, whether or not witnessed, if the signature and the material provisions are in the handwriting of the testator.

History: En. 91A-2-503 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-503.

72-2-304. Self-proved will. (1) Any will may be simultaneously executed, attested, and made self-proved by acknowledgment thereof by the testator and affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of the state where execution occurs and evidenced by the officer's certificate, under official seal, in substantially the following form:

I, ..., the testator, sign my name to this instrument this ...... day of ...., 19...., and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my last will and that I sign it willingly (or willingly direct another to sign for me), that I execute it as my free and voluntary act for the purposes therein expressed, and that I am 18 years of age or older, of sound mind, and under no constraint or undue influence.

....
Testator

We, ..., ..., the witnesses, sign our names to this instrument, being first duly sworn, and do hereby declare to the undersigned authority that the testator signs and executes this instrument as his last will and that he signs it willingly (or willingly directs another to sign for him), and that each of us, in the presence and hearing of the testator, hereby signs this will as witness to the testator's signing, and that to the best of our knowledge the testator is 18 years of age or older, of sound mind, and under no constraint or undue influence.

....
Witness

....
Witness

THE STATE OF ....
COUNTY OF ....

Subscribed, sworn to, and acknowledged before me by ...., the testator, and subscribed and sworn to before me by ...... and ...., witnesses, this ...... day of ......

(SEAL) (Signed)..
(Official capacity of officer)

....

(2) An attested will may at any time subsequent to its execution be made self-proved by the acknowledgment thereof by the testator and the affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of the state where the acknowledgment occurs and evidenced by the officer's certificate, under the official seal, attached or annexed to the will in substantially the following form:

THE STATE OF ....
COUNTY OF ....

We, ..., ..., and ...., the testator and the witnesses, respectively, whose names are signed to the attached or foregoing instrument, being first duly sworn, do hereby declare to the undersigned authority that the testator signed and executed the instrument as his last will and that he had signed willingly or directed another to sign for him and that he executed it as his free and voluntary act for the purposes therein expressed and that each of the witnesses, in the presence and hearing of the testator, signed the will as witness and that to the best of his knowledge the testator was at that time 18 or more years of age, of sound mind, and under no constraint or undue influence.

....Testator
....Witness
....Witness

Subscribed, sworn to, and acknowledged before me by ...., the testator, and subscribed and sworn to before me by .... and ...., witnesses, this .... day of ...., ...

(SEAL) (Signed)..
(Official capacity of officer)
....

History: En. 91A-2-504 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-504; amd. Sec. 5, Ch. 52, L. 1981.

Compiler's Comments

1981 Amendment: Inserted new subsection (1); in (2) substituted "at any time subsequent to its execution" for "at the time of its execution or at any subsequent date"; inserted "where the acknowledgment occurs"; made other minor changes.

72-2-305. Who may witness — effect of witness by beneficiary. (1) Any person generally competent to be a witness may act as a witness to a will.

(2) A will is not invalid because the will is signed by an interested witness.

(3) All beneficial devises made in any will to a subscribing witness thereto are void unless there are two other competent subscribing witnesses to the same, but a mere charge on the estate of the testator does not prevent his creditors from being competent witnesses to his will.

(4) If a witness to whom any beneficial devise void under subsection (3) is made would have been entitled to any share of the estate of the testator if the testator had died intestate, such witness succeeds to so much of the share as would be distributed to him under intestate succession, not exceeding the devise or bequest made to him in the will.

History: En. 91A-2-505 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-505; amd. Sec. 1, Ch. 6, L. 1979.

72-2-306. Choice of law as to execution. A written will is valid if executed in compliance with 72-2-302 or 72-2-303 or if its execution complies with the law at the time of execution of the place where the will is executed or of the law of the place where at the time of execution or at the time of death the testator is domiciled, has a place of abode, or is a national.

History: En. 91A-2-506 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-506.

72-2-307 through 72-2-310 reserved.

72-2-311. Incorporation by reference. Any writing in existence when a will is executed may be incorporated by reference if the language of the will manifests this intent and describes the writing sufficiently to permit its identification.

History: En. 91A-2-510 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-510.

72-2-312. Separate writing identifying disposition of tangible personal property. (1) Whether or not the provisions relating to holographic wills apply, a will may refer to a written statement or list to dispose of items of tangible personal property not otherwise specifically disposed of by the will, other than money, evidences of indebtedness, documents of title, and securities and property used in trade or business.

(2) To be admissible under this section as evidence of the intended disposition, the writing must either be in the handwriting of the testator or be signed by him and must describe the items and the devisees with reasonable certainty.

(3) The writing may be:

(a) referred to as one to be in existence at the time of the testator's death;

(b) prepared before or after the execution of the will;

(c) altered by the testator after its preparation; and

(d) a writing which has no significance apart from its effect upon the dispositions made by the will.

History: **En. 91A-2-513 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-513.**

72-2-313. Events of independent significance. A will may dispose of property by reference to acts and events which have significance apart from their effect upon the dispositions made by the will, whether they occur before or after the execution of the will or before or after the testator's death. The execution or revocation of a will of another person is such an event.

History: **En. 91A-2-512 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-512.**

72-2-314. Testamentary additions to trusts. A devise or bequest, the validity of which is determinable by the law of this state, may be made by a will to the trustee of a trust established or to be established by the testator or by the testator and some other person or by some other person (including a funded or unfunded life insurance trust, although the trustor has reserved any or all rights of ownership of the insurance contracts) if the trust is identified in the testator's will and its terms are set forth in a written instrument (other than a will) executed before or concurrently with the execution of the testator's will or in the valid last will of a person who has predeceased the testator (regardless of the existence, size, or character of the corpus of the trust). The devise is not invalid because the trust is amendable or revocable or because the trust was amended after the execution of the will or after the death of the testator. Unless the testator's will provides otherwise, the property so devised is not deemed to be held under a testamentary trust of the testator but becomes a part of the trust to which it is given and shall be administered and disposed of in accordance with the provisions of the instrument or will setting forth the terms of the trust, including any amendments thereto made before the death of the testator (regardless of whether made before or after the execution of the testator's will) and if the testator's will so provides, including any amendments to the trust made after the death of the testator. A revocation or termination of the trust before the death of the testator causes the devise to lapse.

History: **En. 91A-2-511 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-511.**

72-2-315 through 72-2-320 reserved.

72-2-321. Revocation by writing or act. A will or any part thereof is revoked:

(1) by a subsequent will which revokes the prior will or part expressly or by inconsistency; or

(2) by being burned, torn, canceled, obliterated, or destroyed with the intent and for the purpose of revoking it by the testator or by another person in his presence and by his direction.

History: En. 91A-2-507 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-507.

72-2-322. Revocation by divorce or annulment — no revocation by other change in circumstances. (1) If after executing a will the testator is divorced or his marriage annulled, the divorce or annulment revokes any disposition or appointment of property made by the will to the former spouse, any provision conferring a general or special power of appointment on the former spouse, and any nomination of the former spouse as executor, trustee, conservator, or guardian, unless the will expressly provides otherwise.

(2) Property prevented from passing to a former spouse because of revocation by divorce or annulment passes as if the former spouse failed to survive the decedent, and other provisions conferring some power or office on the former spouse are interpreted as if the spouse failed to survive the decedent.

(3) If provisions are revoked solely by this section, they are revived by testator's remarriage to the former spouse.

(4) For purposes of this section, divorce or annulment means any divorce or annulment which would exclude the spouse as a surviving spouse within the meaning of 72-2-103(2). A decree of separation which does not terminate the status of husband and wife is not a divorce for purposes of this section.

(5) No change of circumstances other than as described in this section revokes a will.

History: En. 91A-2-508 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-508.

72-2-323. Revival of revoked will. (1) If a second will which, had it remained effective at death, would have revoked the first will in whole or in part is thereafter revoked by acts under 72-2-321, the first will is revoked in whole or in part unless it is evident from the circumstances of the revocation of the second will or from testator's contemporary or subsequent declarations that he intended the first will to take effect as executed.

(2) If a second will which, had it remained effective at death, would have revoked the first will in whole or in part is thereafter revoked by a third will, the first will is revoked in whole or in part, except to the extent it appears from the terms of the third will that the testator intended the first will to take effect.

History: En. 91A-2-509 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-509.

Part 4

Wills — Custody and Deposit

72-2-401. Duty of custodian to deliver will — liability. (1) After the death of a testator and on request of an interested person, any person having custody of a will of the testator shall deliver it with reasonable promptness to a person able to secure its probate and, if none is known, to an appropriate court.

(2) Any person who willfully fails to deliver a will is liable to any person aggrieved for the damages which may be sustained by the failure. Any person who willfully refuses or fails to deliver a will after being ordered by the court in a proceeding brought for the purpose of compelling delivery is subject to penalty for contempt of court.

History: **En. 91A-2-902 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-902.**

72-2-402. Deposit of will with court — confidentiality — examination by conservator — delivery. (1) A will may be deposited by the testator or his agent with any court for safekeeping, under rules of the court. The will shall be kept confidential.

(2) During the testator's lifetime a deposited will shall be delivered only to him or to a person authorized in writing signed by him to receive the will.

(3) A conservator may be allowed to examine a deposited will of a protected testator under procedures designed to maintain the confidential character of the document to the extent possible and to assure that it will be resealed and left on deposit after the examination.

(4) Upon being informed of the testator's death, the court shall notify any person designated to receive the will and deliver it to him on request, or the court may deliver the will to the appropriate court.

History: **En. 91A-2-901 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-901.**

Part 5

Wills — Construction and Operation

72-2-501. Intention of testator controls. The intention of a testator as expressed in his will controls the legal effect of his dispositions. The rules of construction expressed in the succeeding sections of this part apply unless a contrary intention is indicated by the will.

History: **En. 91A-2-603 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-603.**

72-2-502. Will construed to pass all property — after-acquired property. A will is construed to pass all property which the testator owns at his death, including property acquired after the execution of the will.

History: **En. 91A-2-604 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-604.**

72-2-503. Half-bloods, adopted persons, and illegitimates included in class gift terminology. Half-bloods, adopted persons, and persons born out of wedlock are included in class gift terminology and terms of relationship in accordance with rules for determining relationships for purposes of intestate succession.

History: **En. 91A-2-611 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-611.**

72-2-504. Choice of law as to meaning and effect of wills. The meaning and legal effect of a disposition in a will shall be determined by the local law of a particular state selected by the testator in his instrument unless the application of that law is contrary to the public policy of this state otherwise applicable to the disposition.

History: **En. 91A-2-602 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-602.**

72-2-505 through 72-2-510 reserved.

72-2-511. Requirement that devisee survive testator by one hundred twenty hours. A devisee who does not survive the testator by 120 hours is treated as if he predeceased the testator unless the will of decedent contains some language dealing explicitly with simultaneous deaths or deaths in a common disaster or requiring that the devisee survive the testator or survive the testator for a stated period in order to take under the will.

History: **En. 91A-2-601 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-601.**

72-2-512. Antilapse. (1) If a devisee who is a grandparent or a lineal descendant of a grandparent of the testator is dead at the time of execution of the will, fails to survive the testator, or is treated as if he predeceased the testator, the issue of the deceased devisee who survive the testator by 120 hours take in place of the deceased devisee and if they are all of the same degree of kinship to the devisee, they take equally, but if of unequal degree then those of more remote degree take by representation.

(2) One who would have been a devisee under a class gift if he had survived the testator is treated as a devisee for purposes of this section whether his death occurred before or after the execution of the will.

History: **En. 91A-2-605 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-605.**

72-2-513. Failure of devise. (1) Except as provided in 72-2-512, if a devise other than a residuary devise fails for any reason, it becomes a part of the residue.

(2) Except as provided in 72-2-512, if the residue is devised to two or more persons and the share of one of the residuary devisees fails for any reason, his share passes to the other residuary devisee or to other residuary devisees in proportion to their interests in the residue.

History: **En. 91A-2-606 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-606.**

72-2-514. Nonexoneration — specific devise subject to security interest. A specific devise passes subject to any security interest existing at the date of death, without right of exoneration, regardless of a general directive in the will to pay debts.

History: **En. 91A-2-609 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-609.**

72-2-515. Ademption by satisfaction. Property which a testator gave in his lifetime to a person is treated as a satisfaction of a devise to that person, in whole or in part, only if the will provides for deduction of the lifetime gift or the testator declares in a contemporaneous writing that the gift is to be deducted from the devise or is in satisfaction of the devise or the devisee acknowledges in writing that the gift is in satisfaction. For purpose of partial satisfaction, property given during lifetime is valued as of the time the devisee came into possession or enjoyment of the property or as of the time of death of the testator, whichever occurs first.

History: **En. 91A-2-612 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-612.**

72-2-516. Nonademption of specific devises in certain cases. (1) If specifically devised property is sold by a conservator or if a condemnation award or insurance proceeds are paid to a conservator as a result of condemnation, fire, or casualty, the specific devisee has the right to a pecuniary devise equal to so much of the sale price, condemnation award, or insurance proceeds as remains in the estate and is identifiable at the time of the decedent's death. This subsection does not apply if subsequent to the sale, condemnation, or casualty it is adjudicated that the disability of the testator has ceased and the testator survives the adjudication by 1 year. The right of the specific devisee under this subsection is reduced by any right he has under subsection (2).

(2) A specific devisee has the right to the remaining specifically devised property and:

(a) any balance of the purchase price (together with any security interest) owing from a purchaser to the testator at death by reason of sale of the property;

(b) any amount of a condemnation award for the taking of the property unpaid at death;

(c) any proceeds unpaid at death on fire or casualty insurance on the property; and

(d) property owned by testator at his death as a result of foreclosure or obtained in lieu of foreclosure of the security for a specifically devised obligation.

History: **En. 91A-2-608 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-608.**

72-2-517. Changes in devised securities — distributions prior to death. (1) If the testator intended a specific devise of certain securities rather than the equivalent value thereof, the specific devisee is entitled only to:

(a) as much of the devised securities as is a part of the estate at time of the testator's death;

(b) any additional or other securities of the same entity owned by the testator by reason of action initiated by the entity;

(c) securities of another entity owned by the testator as a result of a merger, consolidation, reorganization, or other similar action initiated by the entity; and

(d) any additional securities of the entity owned by the testator as a result of a plan of reinvestment if it is a regulated investment company.

(2) Distributions prior to death with respect to a specifically devised security not provided for in subsection (1) are not part of the specific devise.

History: **En. 91A-2-607 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-607.**

72-2-518. No implied exercise of power of appointment. A general residuary clause in a will or a will making general disposition of all of the testator's property does not exercise a power of appointment held by the testator unless specific reference is made to the power or there is some other indication of intention to include the property subject to the power.

History: **En. 91A-2-610 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-610.**

72-2-519. Penalty clause for contest unenforceable. A provision in a will purporting to penalize any interested person for contesting the will or instituting other proceedings relating to the estate is unenforceable if probable cause exists for instituting proceedings.

History: **En. 91A-3-905 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-905.**

Part 6

Wills — Unintentional Omission of Spouse or Child

72-2-601. Omitted spouse. (1) If a testator fails to provide by will for his surviving spouse who married the testator after the execution of the will, the omitted spouse shall receive the same share of the estate he would have received if the decedent left no will unless it appears from the will that the omission was intentional or the testator provided for the spouse by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by statements of the testator or from the amount of the transfer or other evidence.

(2) In satisfying a share provided by this section, the devises made by the will abate as provided in 72-3-901.

History: **En. 91A-2-301 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-301.**

72-2-602. Pretermitted child. (1) If a testator fails to provide in his will for any of his children born or adopted after the execution of his will, the omitted child receives a share in the estate equal in value to that which he would have received if the testator had died intestate unless:

(a) it appears from the will that the omission was intentional;

(b) when the will was executed the testator had one or more children and devised substantially all his estate to the other parent of the omitted child; or

(c) the testator provided for the child by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by statements of the testator or from the amount of the transfer or other evidence.

(2) If at the time of execution of the will the testator fails to provide in his will for a living child solely because he believes the child to be dead, the child receives a share in the estate equal in value to that which he would have received if the testator had died intestate.

(3) In satisfying a share provided by this section, the devises made by the will abate as provided in 72-3-901.

History: **En. 91A-2-302 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-302.**

Part 7

Elective Share of Surviving Spouse

72-2-701. Dower and curtesy abolished. The estates of dower and curtesy are abolished.

History: **En. 91A-2-112 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-112.**

72-2-702. Right to elective share. (1) If a married person domiciled in this state dies, the surviving spouse has a right of election to take an elective share of one-third of the augmented estate under the limitations and conditions hereinafter stated.

(2) If a married person not domiciled in this state dies, the right, if any, of the surviving spouse to take an elective share in property in this state is governed by the law of the decedent's domicile at death.

History: En. 91A-2-201 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-201.

72-2-703. Right of election personal to surviving spouse. The right of election of the surviving spouse may be exercised only by him. In the case of a protected person, the right of election may be exercised only by order of the court in which protective proceedings as to his property are pending after finding that exercise is necessary to provide adequate support for the protected person during his probable life expectancy.

History: En. 91A-2-203 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-203.

72-2-704. Effect of election on benefits by will or statute. (1) The surviving spouse's election of his elective share does not affect the share of the surviving spouse under the provisions of the decedent's will or intestate succession unless the surviving spouse also expressly renounces in the petition for an elective share the benefit of all or any of the provisions. If any provision is so renounced, the property or other benefit which would otherwise have passed to the surviving spouse thereunder is treated, subject to contribution under 72-2-706(2), as if the surviving spouse had predeceased the testator.

(2) A surviving spouse is entitled to homestead allowance, exempt property, and family allowance whether or not he elects to take an elective share.

History: En. 91A-2-206 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-206.

72-2-705. Augmented estate. The augmented estate means the estate, reduced by funeral and administration expenses, homestead allowance, family allowances and exemptions, and enforceable claims, to which is added the sum of the following amounts:

(1) the value of property transferred to anyone other than a bona fide purchaser by the decedent at any time during marriage, to or for the benefit of any person other than the surviving spouse, to the extent that the decedent did not receive adequate and full consideration in money or money's worth for the transfer, if the transfer is of any of the following types:

(a) any transfer under which the decedent retained at the time of his death the possession or enjoyment of or right to income from the property;

(b) any transfer to the extent that the decedent retained at the time of his death a power, either alone or in conjunction with any other person, to revoke or to consume, invade, or dispose of the principal for his own benefit;

(c) any transfer whereby property is held at the time of decedent's death by decedent and another with right of survivorship;

(d) any transfer made to a donee within 2 years of death of the decedent to the extent that the aggregate transfers to any one donee in any of the years exceed $3,000;

(2) any transfer is excluded if made with the written consent or joinder of the surviving spouse. Property is valued as of the decedent's death except

that property given irrevocably to a donee during lifetime of the decedent is valued as of the date the donee came into possession or enjoyment if that occurs first. Nothing herein shall cause to be included in the augmented estate any life insurance, accident insurance, joint annuity, or pension payable to a person other than the surviving spouse.

(3) the value of property owned by the surviving spouse at the decedent's death, plus the value of property transferred by the spouse at any time during marriage to any person other than the decedent which would have been includible in the spouse's augmented estate if the surviving spouse had predeceased the decedent, to the extent the owned or transferred property is derived from the decedent by any means other than testate or intestate succession without a full consideration in money or money's worth. For purposes of this subsection:

(a) property derived from the decedent includes but is not limited to any beneficial interest of the surviving spouse in a trust created by the decedent during his lifetime, any property appointed to the spouse by the decedent's exercise of a general or special power of appointment also exercisable in favor of others than the spouse, any proceeds of insurance (including accidental death benefits) on the life of the decedent attributable to premiums paid by him, any lump sum immediately payable and the commuted value of the proceeds of annuity contracts under which the decedent was the primary annuitant attributable to premiums paid by him, the commuted value of accounts payable after the decedent's death under any public or private pension, disability compensation, death benefit, or retirement plan, exclusive of the federal social security system, by reason of service performed or disabilities incurred by the decedent, any property held at the time of decedent's death by decedent and the surviving spouse with right of survivorship, any property held by decedent and transferred by contract to the surviving spouse by reason of the decedent's death, and the value of the share of the surviving spouse resulting from rights in community property in this or any other state formerly owned with the decedent. Premiums paid by the decedent's employer, his partner, a partnership of which he was a member, or his creditors are deemed to have been paid by the decedent.

(b) property owned by the spouse at the decedent's death is valued as of the date of death. Property transferred by the spouse is valued at the time the transfer became irrevocable or at the decedent's death, whichever occurred first. Income earned by included property prior to the decedent's death is not treated as property derived from the decedent.

(c) property owned by the surviving spouse as of the decedent's death or previously transferred by the surviving spouse is presumed to have been derived from the decedent, except to the extent that the surviving spouse establishes that it was derived from another source.

(4) For the purposes of this section, a bona fide purchaser is a purchaser for value in good faith and without notice of any adverse claim. Any recorded instrument is prima facie evidence that the transfer described therein was made to a bona fide purchaser.

History: En. 91A-2-202 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-202; amd. Sec. 6, Ch. 52, L. 1981.

Compiler's Comments

1981 Amendment: Inserted "to anyone other than a bona fide purchaser" near the beginning of (1), "to a donee" in (1)(d), and "any property held at the time of decedent's death by decedent and the surviving spouse with right of survivorship, any property held by decedent and transferred by contract to the surviving spouse by reason of the decedent's death" near the end of (3)(a), and added subsection (4); substituted "2 years" for "3 years" in (1)(d).

72-2-706. Charging spouse with property received — liability of others for balance of elective share. (1) In the proceeding for an elective share, values included in the augmented estate which pass or have passed to the surviving spouse, or which would have passed to the spouse but were renounced, are applied first to satisfy the elective share and to reduce any contributions due from other recipients of transfers included in the augmented estate. For purposes of this subsection, the electing spouse's beneficial interest in any life estate or in any trust shall be computed as if worth one-half of the total value of the property subject to the life estate, or of the trust estate, unless higher or lower values for these interests are established by proof.

(2) Remaining property of the augmented estate is so applied that liability for the balance of the elective share of the surviving spouse is equitably apportioned among the recipients of the augmented estate in proportion to the value of their interests therein.

(3) Only original transferees from or appointees of the decedent and their donees, to the extent the donees have the property or its proceeds, are subject to the contribution to make up the elective share of the surviving spouse. A person liable to contribution may choose to give up the property transferred to him or to pay its value as of the time it is considered in computing the augmented estate.

History: En. 91A-2-207 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-207; amd. Sec. 7, Ch. 52, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "values included in" for "property which is part of"; substituted "or which would have passed to the spouse but were renounced" for "by testate or intestate succession or other means and which has not been renounced, including that described in 72-2-705(3)"; substituted "any contributions due" for "the amount due"; substituted "transfers included in" for "portions of"; and added the final sentence in (1).

72-2-707. Procedure for making of election. (1) The surviving spouse may elect to take his elective share in the augmented estate by filing in the court and mailing or delivering to the personal representative, if any, a petition for the elective share within 9 months after the date of death or within 6 months after the probate of the decedent's will, whichever limitation last expires. However, the nonprobate transfers described in 72-2-705(1) shall not be included within the augmented estate for the purpose of computing the elective share if the petition is filed later than 9 months after death. The court may extend the time for election as it sees fit for cause shown by the surviving spouse before the time for election has expired.

(2) The surviving spouse shall give notice of the time and place set for hearing to persons interested in the estate and to the distributees and recipients of portions of the augmented net estate whose interests will be adversely affected by the taking of the elective share.

(3) The surviving spouse may withdraw his demand for an elective share at any time before entry of a final determination by the court.

(4) After notice and hearing, the court shall determine the amount of the elective share and shall order its payment from the assets of the augmented

net estate or by contribution as appears appropriate under 72-2-706. If it appears that a fund or property included in the augmented net estate has not come into the possession of the personal representative or has been distributed by the personal representative, the court nevertheless shall fix the liability of any person who has any interest in the fund or property or who has possession thereof, whether as trustee or otherwise. The proceeding may be maintained against fewer than all persons against whom relief could be sought, but no person is subject to contribution in any greater amount than he would have been if relief had been secured against all persons subject to contribution.

(5) The order or judgment of the court may be enforced as necessary in suit for contribution or payment in other courts of this state or other jurisdictions.

History: En. 91A-2-205 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-205; amd. Sec. 8, Ch. 52, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "net" following "augmented" near beginning of (1); extended the time for filing the petition for elective share from 6 to 9 months after the date of death or within 6 months after probate; added the "however" clause as next to last sentence in (1).

Part 8

Exempt Property and Allowances

72-2-801. Homestead allowance. (1) A surviving spouse of a decedent who was domiciled in this state is entitled to a homestead allowance of $20,000. If there is no surviving spouse, each minor child and each dependent child of the decedent is entitled to a homestead allowance amounting to $20,000, divided by the number of minor and dependent children of the decedent.

(2) The homestead allowance is exempt from and has priority over all claims against the estate.

(3) Homestead allowance is in addition to any share passing to the surviving spouse or minor or dependent child by the will of the decedent unless otherwise provided, by intestate succession, or by way of elective share.

History: En. 91A-2-401 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 1, Ch. 153, L. 1977; R.C.M. 1947, 91A-2-401.

72-2-802. Exempt property. (1) In addition to the homestead allowance, the surviving spouse of a decedent who was domiciled in this state is entitled from the estate to value not exceeding $3,500 in excess of any security interests therein in household furniture, automobiles, furnishings, appliances, and personal effects. If there is no surviving spouse, children of the decedent are entitled jointly to the same value. If encumbered chattels are selected and if the value in excess of security interests, plus that of other exempt property, is less than $3,500 or if there is not $3,500 worth of exempt property in the estate, the spouse or children are entitled to other assets of the estate, if any, to the extent necessary to make up the $3,500 value.

(2) Rights to exempt property and assets needed to make up a deficiency of exempt property have priority over all claims against the estate, except

that the right to any assets to make up a deficiency of exempt property shall abate as necessary to permit prior payment of homestead allowance and family allowance.

(3) These rights are in addition to any benefit or share passing to the surviving spouse or children by the will of the decedent unless otherwise provided, by intestate succession, or by way of elective share.

History: En. 91A-2-402 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-402.

72-2-803. Family allowance. (1) In addition to the right to homestead allowance and exempt property, if the decedent was domiciled in this state, the surviving spouse and minor children whom the decedent was obligated to support and children who were in fact being supported by him are entitled to a reasonable allowance in money out of the estate for their maintenance during the period of administration, which allowance may not continue for longer than 1 year if the estate is inadequate to discharge allowed claims. The allowance may be paid as a lump sum or in periodic installments.

(2) It is payable to the surviving spouse, if living, for the use of the surviving spouse and minor and dependent children, otherwise to the children or persons having their care and custody; but in case any minor child or dependent child is not living with the surviving spouse, the allowance may be made partially to the child or his guardian or other person having his care and custody and partially to the spouse, as their needs may appear.

(3) The family allowance is exempt from and has priority over all claims but not over the homestead allowance.

(4) The family allowance is not chargeable against any benefit or share passing to the surviving spouse or children by the will of the decedent unless otherwise provided, by intestate succession, or by way of elective share.

(5) The death of any person entitled to family allowance terminates his right to allowances not yet paid.

History: En. 91A-2-403 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-403.

72-2-804. Source, determination, and documentation. (1) If the estate is otherwise sufficient, property specifically devised is not used to satisfy rights to homestead and exempt property. Subject to this restriction, the surviving spouse, the guardians of the minor children, or children who are adults may select property of the estate as homestead allowance and exempt property. The personal representative may make these selections if the surviving spouse, the children, or the guardians of the minor children are unable or fail to do so within a reasonable time or if there are no guardians of the minor children. The personal representative may execute an instrument or deed of distribution to establish the ownership of property taken as homestead allowance or exempt property. He may determine the family allowance in a lump sum not exceeding $6,000 or periodic installments not exceeding $500 per month for 1 year and may disburse funds of the estate in payment of the family allowance and any part of the homestead allowance payable in cash.

(2) The personal representative or any interested person aggrieved by any selection, determination, payment, proposed payment, or failure to act under this section may petition the court for appropriate relief, which relief may

provide a family allowance larger or smaller than that which the personal representative determined or could have determined.

History: **En. 91A-2-404 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-404.**

CHAPTER 3

UPC — PROBATE AND ADMINISTRATION

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Part 1

General Provisions

72-3-101. Devolution of estate at death — restrictions. (1) The power of a person to leave property by will and the rights of creditors, devisees, and heirs to his property are subject to the restrictions and limitations contained in this code to facilitate the prompt settlement of estates.

(2) Upon the death of a person, his real and personal property devolves to the persons to whom it is devised by his last will or to those indicated as substitutes for them in cases involving lapse, renunciation, or other circumstances affecting the devolution of testate estates or, in the absence of testamentary disposition, to his heirs or to those indicated as substitutes for them in cases involving renunciation or other circumstances affecting devolution of intestate estates, subject to homestead allowance, exempt property,

and family allowance, to rights of creditors, elective share of the surviving spouse, and to administration.

History: En. 91A-3-101 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-101.

72-3-102. Necessity of probate of will. Except as provided in 72-3-1101, to be effective to prove the transfer of any property or to nominate an executor, a will must be declared to be valid by an order of informal probate by the clerk or an adjudication of probate by the court, except that a duly executed and unrevoked will which has not been probated may be admitted as evidence of a devise if:

(1) no court proceeding concerning the succession or administration of the estate has occurred; and

(2) either:

(a) the devisee or his successors and assigns possessed the property devised in accordance with the provisions of the will; or

(b) the property devised was not possessed or claimed by anyone by virtue of the decedent's title during the time period for testacy proceedings.

History: En. 91A-3-102 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-102.

72-3-103. Necessity of appointment for administration. Except as otherwise provided in chapter 4, to acquire the powers and undertake the duties and liabilities of a personal representative of a decedent, a person must be appointed by order of the court or clerk, qualify, and be issued letters. Administration of an estate is commenced by the issuance of letters.

History: En. 91A-3-103 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-103.

72-3-104. Claims against decedent — necessity of administration. (1) No proceeding to enforce a claim against the estate of a decedent or his successors may be revived or commenced before the appointment of a personal representative. After the appointment and until distribution, all proceedings and actions to enforce a claim against the estate are governed by the procedure prescribed by 72-3-101 through 72-3-1103. After distribution a creditor whose claim has not been barred may recover from the distributees as provided in 72-3-1012 or from a former personal representative individually liable as provided in 72-3-1014.

(2) This section has no application to a proceeding by a secured creditor of the decedent to enforce his right to his security except as to any deficiency judgment which might be sought therein.

History: En. 91A-3-104 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-104.

72-3-105. Interested persons' rights of application and petition. Persons interested in decedent's estate may apply to the clerk for determination in the informal proceedings provided in chapter 3, part 2, and may petition the court for orders in formal proceedings within the court's jurisdiction, including but not limited to those described in chapter 3, parts 3 and 4.

History: En. 91A-3-105 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-105(part).

72-3-106. Interested person's right to demand notice of order or filing. (1) Any person desiring notice of any order or filing pertaining to a decedent's estate in which he has a financial or property interest may file a demand for notice with the court at any time after the death of the decedent stating:

(a) the name of the decedent;

(b) the nature of his interest in the estate; and

(c) the demandant's address or that of his attorney.

(2) The clerk shall mail a copy of the demand to the personal representative if one has been appointed.

(3) After filing of a demand, no order or filing to which the demand relates shall be made or accepted without notice as prescribed in 72-1-301 to the demandant or his attorney. The validity of an order which is issued or filing which is accepted without compliance with this requirement shall not be affected by the error, but the petitioner receiving the order or the person making the filing may be liable for any damage caused by the absence of notice.

(4) The requirement of notice arising from a demand under this provision may be waived in writing by the demandant and shall cease upon the termination of his interest in the estate.

History: En. 91A-3-204 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-204.

72-3-107 through 72-3-110 reserved.

72-3-111. Exclusive jurisdiction of court — binding nature of orders after notice. (1) The district court has exclusive jurisdiction of all probate matters.

(2) In proceedings within the exclusive jurisdiction of the court where notice is required by this code or by rule, interested persons may be bound by the orders of the court in respect to property in or subject to the laws of this state by notice in conformity with 72-1-301. An order is binding as to all who are given notice of the proceeding though less than all interested persons are notified.

History: En. 91A-3-105, 91A-3-106 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-105(part), 91A-3-106.

72-3-112. Venue for estate proceedings. (1) Venue for the first informal or formal testacy or appointment proceedings after a decedent's death is:

(a) in the county where the decedent had his domicile at the time of his death; or

(b) if the decedent was not domiciled in this state, in any county where property of the decedent was located at the time of his death.

(2) Venue for all subsequent proceedings within the exclusive jurisdiction of the court is in the place where the initial proceeding occurred unless the initial proceeding has been transferred as provided in 72-1-203 or subsection (3) of this section.

(3) If the first proceeding was informal, on application of an interested person and after notice to the proponent in the first proceeding, the court, upon finding that venue is elsewhere, may transfer the proceeding and the file to the other court.

History: En. 91A-3-201 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-201(1) thru (3).

72-3-113. Rules for determining location of property. (1) For the purpose of aiding determinations concerning location of assets which may be relevant in cases involving nondomiciliaries, a debt, other than one evidenced by investment or commercial paper or other instrument in favor of a nondomiciliary, is located where the debtor resides or, if the debtor is a person other than an individual, at the place where it has its principal office.

(2) Commercial paper, investment paper, and other instruments are located where the instrument is.

(3) An interest in property held in trust is located where the trustee may be sued.

History: **En. 91A-3-201 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-201(4).**

72-3-114. Conflicting claim as to domicile in another state. If conflicting claims as to the domicile of a decedent are made in a formal testacy or appointment proceeding commenced in this state and in a testacy or appointment proceeding after notice pending at the same time in another state, the court of this state must stay, dismiss, or permit suitable amendment in the proceeding here unless it is determined that the local proceeding was commenced before the proceeding elsewhere. The determination of domicile in the proceeding first commenced must be accepted as determinative in the proceeding in this state.

History: **En. 91A-3-202 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-202.**

72-3-115 through 72-3-120 reserved.

72-3-121. Scope of proceedings when no supervised administration — proceedings independent — combination of proceedings. Unless supervised administration as described in chapter 3, part 4, is involved:

(1) each proceeding before the court or clerk is independent of any other proceeding involving the same estate;

(2) petitions for formal orders of the court may combine various requests for relief in a single proceeding if the orders sought may be finally granted without delay. Except as required for proceedings which are particularly described by other sections of this code, no petition is defective because it fails to embrace all matters which might then be the subject of a final order.

(3) proceedings for probate of wills or adjudications of no will may be combined with proceedings for appointment of personal representatives; and

(4) a proceeding for appointment of a personal representative is concluded by an order making or declining the appointment.

History: **En. 91A-3-107 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-107.**

72-3-122. Time limit on probate, testacy, and appointment proceedings — exceptions. (1) No informal probate or appointment proceeding or formal testacy or appointment proceeding, other than a proceeding to probate a will previously probated at the testator's domicile and appointment proceedings relating to an estate in which there has been a prior appointment, may be commenced more than 3 years after the decedent's death, except:

(a) if a previous proceeding was dismissed because of doubt about the fact of the decedent's death, appropriate probate, appointment, or testacy proceedings may be maintained at any time thereafter upon a finding that the decedent's death occurred prior to the initiation of the previous proceeding and the applicant or petitioner has not delayed unduly in initiating the subsequent proceeding;

(b) appropriate probate, appointment, or testacy proceedings may be maintained in relation to the estate of an absent, disappeared, or missing person for whose estate a conservator has been appointed at any time within 3 years after the conservator becomes able to establish the death of the protected person; and

(c) a proceeding to contest an informally probated will and to secure appointment of the person with legal priority for appointment in the event the contest is successful may be commenced within the later of 12 months from the informal probate or 3 years from the decedent's death.

(2) These limitations do not apply to proceedings to construe probated wills or determine heirs of an intestate, nor do they limit the right of interested persons to commence informal probate or appointment proceedings or formal testacy or appointment proceedings at any time after 3 years from the decedent's death if there have been no previous formal or informal probate or appointment proceedings commenced in respect of that decedent.

(3) In cases under (1)(a) or (1)(b) above, the date on which a testacy or appointment proceeding is properly commenced shall be deemed to be the date of the decedent's death for purposes of other limitations provisions of this code which relate to the date of death.

History: **En. 91A-3-108 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-108.**

72-3-123. Statutes of limitation on decedent's cause of action — applicability. No statute of limitation running on a cause of action belonging to a decedent, which had not been barred as of the date of his death, shall apply to bar a cause of action surviving the decedent's death sooner than 4 months after death. A cause of action which, but for this section, would have been barred less than 4 months after death is barred after 4 months unless tolled.

History: **En. 91A-3-109 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-109.**

72-3-124 through 72-3-130 reserved.

72-3-131. Compromise of controversies. (1) A compromise of any controversy as to admission to probate of any instrument offered for formal probate as the will of a decedent, the construction, validity, or effect of any probate will, the rights or interests in the estate of the decedent, of any successor, or the administration of the estate, if approved in a formal proceeding in the court for that purpose, is binding on all the parties thereto, including those unborn, unascertained, or who could not be located.

(2) An approved compromise is binding even though it may affect a trust or an inalienable interest. A compromise does not impair the rights of creditors or of taxing authorities who are not parties to it.

History: **En. 91A-3-1101 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-1101.**

72-3-132. Procedure for securing court approval of compromise. The procedure for securing court approval of a compromise is as follows:

(1) The terms of the compromise shall be set forth in an agreement in writing which shall be executed by all competent persons and parents acting for any minor child having beneficial interests or having claims which will or may be affected by the compromise. Execution is not required by any person whose identity cannot be ascertained or whose whereabouts is unknown and cannot reasonably be ascertained.

(2) Any interested person, including the personal representative or a trustee, then may submit the agreement to the court for its approval and for execution by the personal representative, the trustee of every affected testamentary trust, and other fiduciaries and representatives.

(3) After notice to all interested persons or their representatives, including the personal representative of the estate and all affected trustees of trusts, the court, if it finds that the contest or controversy is in good faith and that the effect of the agreement upon the interests of persons represented by fiduciaries or other representatives is just and reasonable, shall make an order approving the agreement and directing all fiduciaries under its supervision to execute the agreement. Minor children represented only by their parents may be bound only if their parents join with other competent persons in execution of the compromise.

(4) Upon the making of the order and the execution of the agreement, all further disposition of the estate is in accordance with the terms of the agreement.

History: En. 91A-3-1102 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-1102.

Part 2

Informal Probate and Appointment Proceedings

72-3-201. Applications to be verified. Applications for informal probate or informal appointment shall be directed to the clerk and verified by the applicant to be accurate and complete to the best of his knowledge and belief as to the information required by 72-3-202 through 72-3-205.

History: En. 91A-3-301 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-301(part).

72-3-202. Required contents of application. Every application for informal probate of a will or for informal appointment of a personal representative, other than a special, ancillary, or successor representative, shall contain the following:

(1) a statement of the interest of the applicant;

(2) the name and date of death of the decedent, his age, and the county and state of his domicile at the time of death and the names and addresses of the spouse, children, heirs, and devisees and the ages of any who are minors so far as known or ascertainable with reasonable diligence by the applicant;

(3) if the decedent was not domiciled in the state at the time of his death, a statement showing venue;

(4) a statement identifying and indicating the address of any personal representative of the decedent appointed in this state or elsewhere whose appointment has not been terminated;

(5) a statement indicating whether the applicant has received a demand for notice or is aware of any demand for notice of any probate or appointment proceeding concerning the decedent that may have been filed in this state or elsewhere.

History: En. 91A-3-301 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-301(1).

72-3-203. Probate and appointment under will — additional information required. (1) An application for informal probate of a will shall state the following in addition to the statements required by 72-3-202:

(a) that the original of the decedent's last will is in the possession of the court or accompanies the application or that an authenticated copy of a will probated in another jurisdiction accompanies the application;

(b) that the applicant to the best of his knowledge believes the will to have been validly executed;

(c) that after the exercise of reasonable diligence, the applicant is unaware of any instrument revoking the will and that the applicant believes that the instrument which is the subject of the application is the decedent's last will;

(d) that the time limit for informal probate as provided in this chapter has not expired either because 3 years or less have passed since the decedent's death or, if more than 3 years from death have passed, that circumstances as described by 72-3-122 authorizing tardy probate have occurred.

(2) An application for informal appointment of a personal representative to administer an estate under a will shall describe the will by date of execution and state the time and place of probate or the pending application or petition for probate. The application for appointment shall adopt the statements in the application or petition for probate and state the name, address, and priority for appointment of the person whose appointment is sought.

History: En. 91A-3-301 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-301(2), (3).

72-3-204. Appointment in intestacy — additional information required. An application for informal appointment of an administrator in intestacy shall state in addition to the statements required by 72-3-202:

(1) that after the exercise of reasonable diligence, the applicant is unaware of any unrevoked testamentary instrument relating to property having a situs in this state under 72-1-201 or a statement why any such instrument of which he may be aware is not being probated;

(2) the priority of the person whose appointment is sought and the names of any other persons having a prior or equal right to the appointment under 72-3-501 through 72-3-508.

History: En. 91A-3-301 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-301(4).

72-3-205. Application for appointment of successor personal representative. (1) An application for appointment of a personal representative to succeed a personal representative appointed under a different testacy status shall refer to the order in the most recent testacy proceeding, state the name and address of the person whose appointment is sought and of the person whose appointment will be terminated if the application is granted, and describe the priority of the applicant.

(2) An application for appointment of a personal representative to succeed a personal representative who has tendered a resignation as provided

in 72-3-525 or whose appointment has been terminated by death or removal shall adopt the statements in the application or petition which led to the appointment of the person being succeeded except as specifically changed or corrected, state the name and address of the person who seeks appointment as successor, and describe the priority of the applicant.

History: En. 91A-3-301 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-301(5), (6).

72-3-206 through 72-3-210 reserved.

72-3-211. Informal probate — notice requirements. (1) The moving party must give notice as described by 72-1-301 of his application for informal probate:

(a) to any person demanding it pursuant to 72-3-106; and

(b) to any personal representative of the decedent whose appointment has not been terminated.

(2) No other notice of informal probate is required.

History: En. 91A-3-306 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-306.

72-3-212. Informal probate — clerk to make findings. In an informal proceeding for original probate of a will, the clerk shall determine whether:

(1) the application is complete;

(2) the applicant has made oath or affirmation that the statements contained in the application are true to the best of his knowledge and belief;

(3) the applicant appears from the application to be an interested person as defined in 72-1-103(21);

(4) on the basis of the statements in the application, venue is proper;

(5) an original, duly executed, and apparently unrevoked will is in the clerk's possession;

(6) any notice required by 72-3-106 has been given and that the application is not within 72-3-213(5); and

(7) it appears from the application that the time limit for original probate has not expired.

History: En. 91A-3-303 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 2, Ch. 516, L. 1975; R.C.M. 1947, 91A-3-303(1).

72-3-213. Rules for grant or denial of informal probate. (1) A will which appears to have the required signatures and which contains an attestation clause showing that requirements of execution under 72-2-302, 72-2-303, or 72-2-306 have been met shall be probated without further proof. In other cases the clerk may assume execution if the will appears to be properly executed, or he may accept a sworn statement or affidavit of any person having knowledge of the circumstances of execution, whether or not the person was a witness to the will.

(2) The application shall be denied if it indicates that a personal representative has been appointed in another county of this state or, except as provided in subsection (3) below, if it appears that this or another will of the decedent has been the subject of a previous probate order.

(3) Informal probate of a will which has been previously probated elsewhere may be granted at any time upon written application by any interested

person, together with deposit of an authenticated copy of the will and of the statement probating it from the office or court where it was first probated.

(4) A will from a place which does not provide for probate of a will after death and which is not eligible for probate under 72-3-212 may be probated in this state upon receipt by the clerk of a duly authenticated copy of the will and a duly authenticated certificate of its legal custodian that the copy filed is a true copy and that the will has become operative under the law of the other place.

(5) Application for informal probate which relates to one or more of a known series of testamentary instruments (other than wills and codicils), the latest of which does not expressly revoke the earlier, shall be declined.

History: (1) thru (4)En. 91A-3-303 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 2, Ch. 516, L. 1975; Sec. 91A-3-303, R.C.M. 1947; (5)En. 91A-3-304 by Sec. 1, Ch. 365, L. 1974; Sec. 91A-3-304, R.C.M. 1947; R.C.M. 1947, 91A-3-303(2) thru (5), 91A-3-304.

72-3-214. Power of clerk to deny informal probate — effect of denial. (1) If the clerk is not satisfied that a will is entitled to be probated in informal proceedings because of failure to meet the requirements of 72-3-212 and 72-3-213 or any other reason, he may decline the application.

(2) A declination of informal probate is not an adjudication and does not preclude formal probate proceedings.

History: En. 91A-3-305 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-305.

72-3-215. Clerk to issue statement of informal probate — effect — procedural defect not to void probate. (1) Upon receipt of an application requesting informal probate of a will, the clerk, upon making the findings required by 72-3-212 and 72-3-213, shall issue a written statement of informal probate if at least 120 hours have elapsed since the decedent's death.

(2) Informal probate is conclusive as to all persons until superseded by an order in a formal testacy proceeding.

(3) No defect in the application or procedure relating thereto which leads to informal probate of a will renders the probate void.

History: En. 91A-3-302 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-302.

72-3-216 through 72-3-220 reserved.

72-3-221. Informal appointment — notice requirements. (1) The moving party must give notice as described by 72-1-301 of his intention to seek an appointment informally:

(a) to any person demanding it pursuant to 72-3-106; and

(b) to any person having a prior or equal right to appointment not waived in writing and filed with the court.

(2) No other notice of an informal appointment proceeding is required.

History: En. 91A-3-310 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-310.

72-3-222. Informal appointment — clerk to make findings. In informal appointment proceedings, the clerk must determine whether:

(1) the application for informal appointment of a personal representative is complete;

(2) the applicant has made oath or affirmation that the statements contained in the application are true to the best of his knowledge and belief;

(3) the applicant appears from the application to be an interested person as defined in 72-1-103(21);

(4) on the basis of the statements in the application, venue is proper;

(5) any will to which the requested appointment relates has been formally or informally probated, but this requirement does not apply to the appointment of a special administrator;

(6) any notice required by 72-3-106 has been given;

(7) from the statements in the application, the person whose appointment is sought has priority entitling him to the appointment.

History: En. 91A-3-308 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-308(1).

72-3-223. Rules for denial of informal appointment. (1) Unless 72-3-523 controls, the application must be denied if it indicates:

(a) that a personal representative who has not filed a written statement of resignation as provided in 72-3-525 has been appointed in this or another county of this state;

(b) that (unless the applicant is the domiciliary personal representative or his nominee) the decedent was not domiciled in this state and that a personal representative whose appointment has not been terminated has been appointed by a court in the state of domicile; or

(c) that other requirements of 72-3-222 have not been met.

(2) If an application for informal appointment indicates the existence of a possible unrevoked testamentary instrument which may relate to property subject to the laws of this state and which is not filed for probate in this court, the clerk shall decline the application.

History: En. 91A-3-308, 91A-3-311 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-308(2), 91A-3-311.

72-3-224. Informal appointment — power of clerk to deny — effect of denial. (1) If the clerk is not satisfied that a requested informal appointment of a personal representative should be made because of failure to meet the requirements of 72-3-222, 72-3-223, and 72-3-225 or for any other reason, he may decline the application.

(2) A declination of informal appointment is not an adjudication and does not preclude appointment in formal proceedings.

History: En. 91A-3-309 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-309.

72-3-225. Duty of clerk to make appointment — effect. (1) Upon receipt of an application for informal appointment of a personal representative other than a special administrator as provided in 72-3-701, if at least 120 hours have elapsed since the decedent's death, the clerk, after making the findings required by 72-3-222 and 72-3-223, shall appoint the applicant subject to qualification and acceptance, provided that if the decedent was a nonresident, the clerk shall delay the order of appointment until 30 days have elapsed since death unless the personal representative appointed at the decedent's domicile is the applicant or unless the decedent's will directs that his estate be subject to the laws of this state.

(2) The status of personal representative and the powers and duties pertaining to the office are fully established by informal appointment. An

appointment and the office of personal representative created thereby is subject to termination as provided in 72-3-521 through 72-3-526 but is not subject to retroactive vacation.

History: **En. 91A-3-307 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-307.**

Part 3

Formal Testacy and Appointment Proceedings

72-3-301. Petition for formal testacy or appointment — contents — last will. (1) Petitions for formal probate of a will or for adjudication of intestacy with or without request for appointment of a personal representative must be directed to the court, request a judicial order after notice and hearing, and contain further statements as indicated in this section. A petition for formal probate of a will:

(a) requests an order as to the testacy of the decedent in relation to a particular instrument which may or may not have been informally probated and determining the heirs;

(b) contains the statements required for informal applications as stated in the five subsections under 72-3-202, the statements required by subsections (b) and (c) of 72-3-203(1); and

(c) states whether the original of the last will of the decedent is in the possession of the court or accompanies the petition. If the original will is neither in the possession of the court nor accompanies the petition and no authenticated copy of a will probated in another jurisdiction accompanies the petition, the petition also must state the contents of the will and indicate that it is lost, destroyed, or otherwise unavailable.

(2) A petition for adjudication of intestacy and appointment of an administrator in intestacy must request a judicial finding and order that the decedent left no will and determining the heirs, contain the statements required by 72-3-202 and 72-3-204, and indicate whether supervised administration is sought. A petition may request an order determining intestacy and heirs without requesting the appointment of an administrator, in which case the statements required by 72-3-204(2) may be omitted.

History: **En. 91A-3-402 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-402.**

72-3-302. Formal testacy proceedings — nature — how and when commenced. (1) A formal testacy proceeding is litigation to determine whether a decedent left a valid will.

(2) A formal testacy proceeding may be commenced by an interested person filing a petition:

(a) as described in 72-3-301(1) in which he requests that the court, after notice and hearing, enter an order probating a will;

(b) to set aside an informal probate of a will or to prevent informal probate of a will which is the subject of a pending application; or

(c) for an order that the decedent died intestate.

(3) A petition may seek formal probate of a will without regard to whether the same or a conflicting will has been informally probated.

(4) A formal testacy proceeding may but need not involve a request for appointment of a personal representative.

History: **En. 91A-3-401 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-401(part).**

72-3-303. Formal proceeding supersedes all informal applications. During the pendency of a formal testacy proceeding, the clerk shall not act upon any application for informal probate of any will of the decedent or any application for informal appointment of a personal representative of the decedent.

History: En. 91A-3-401 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-401(part).

72-3-304. Effect of formal proceeding on power of informally appointed personal representative. Unless a petition in a formal testacy proceeding also requests confirmation of the previous informal appointment, a previously appointed personal representative, after receipt of notice of the commencement of a formal probate proceeding, must refrain from exercising his power to make any further distribution of the estate during the pendency of the formal proceeding. A petitioner who seeks the appointment of a different personal representative in a formal proceeding also may request an order restraining the acting personal representative from exercising any of the powers of his office and requesting the appointment of a special administrator. In the absence of a request or if the request is denied, the commencement of a formal proceeding has no effect on the powers and duties of a previously appointed personal representative other than those relating to distribution.

History: En. 91A-3-401 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-401(part).

72-3-305. Notice of hearing on petition for formal testacy proceeding. (1) Upon commencement of a formal testacy proceeding, the court or clerk shall fix a time and place of hearing.

(2) Notice shall be given in the manner prescribed by 72-1-301 by the petitioner to the persons herein enumerated and to any additional person who has filed a demand for notice under 72-3-106 of this code. Notice shall be given to the following persons:

(a) the surviving spouse, children, and other heirs of the decedent;

(b) the devisees and executors named in any will that is being or has been probated or offered for informal or formal probate in the county or that is known by the petitioner to have been probated or offered for informal or formal probate elsewhere; and

(c) any personal representative of the decedent whose appointment has not been terminated.

(3) In addition, the petitioner shall give notice by publication to all unknown persons and to all known persons whose addresses are unknown who have any interest in the matters being litigated.

(4) Notice may be given to other persons.

History: En. 91A-3-403 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 3, Ch. 516, L. 1975; R.C.M. 1947, 91A-3-403(1).

72-3-306. Notice and procedure when fact of death in doubt. (1) If it appears by the petition or otherwise that the fact of the death of the alleged decedent may be in doubt or on the written demand of any interested person, a copy of the notice of the hearing on said petition shall be sent by registered or certified mail to the alleged decedent at his last known address. The court shall direct the petitioner to report the results of or make and report back concerning a reasonably diligent search for the alleged decedent in any manner that may seem advisable, including any or all of the following methods:

(a) by inserting in one or more suitable periodicals a notice requesting information from any person having knowledge of the whereabouts of the alleged decedent;

(b) by notifying law enforcement officials and public welfare agencies in appropriate locations of the disappearance of the alleged decedent;

(c) by engaging the services of an investigator.

(2) The costs of any search so directed shall be paid by the petitioner if there is no administration or by the estate of the decedent in case there is administration.

History: En. 91A-3-403 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 3, Ch. 516, L. 1975; R.C.M. 1947, 91A-3-403(2).

72-3-307. Hearings and proof in uncontested cases. If a petition in a testacy proceeding is unopposed, the court may order probate or intestacy on the strength of the pleadings if satisfied that the conditions of 72-3-313 and 72-3-316 have been met or conduct a hearing in open court and require proof of the matters necessary to support the order sought. If evidence concerning execution of the will is necessary, the affidavit or testimony of one of any attesting witnesses to the instrument is sufficient. If the affidavit or testimony of an attesting witness is not available, execution of the will may be proved by other evidence or affidavit.

History: En. 91A-3-405 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-405.

72-3-308. Written objections to probate. Any party to a formal proceeding who opposes the probate of a will for any reason shall state in his pleadings his objections to probate of the will.

History: En. 91A-3-404 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-404.

72-3-309. Testimony of attesting witnesses in contested cases — presumptions for self-proved will. (1) If evidence concerning execution of an attested will which is not self-proved is necessary in contested cases, the testimony of at least one of the attesting witnesses, if within the state and competent and able to testify, is required. Due execution of an attested or unattested will may be proved by other evidence.

(2) If the will is self-proved, compliance with signature requirements for execution is conclusively presumed and other requirements of execution are presumed, subject to rebuttal, without the testimony of any witness, upon filing the will and the acknowledgment and affidavits annexed or attached thereto, unless there is proof of fraud or forgery affecting the acknowledgment or affidavit.

History: En. 91A-3-406 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-406; amd. Sec. 2, Ch. 6, L. 1979.

72-3-310. Burdens in contested cases. In contested cases, petitioners who seek to establish intestacy have the burden of establishing prima facie proof of death, venue, and heirship. Proponents of a will have the burden of establishing prima facie proof of due execution in all cases and, if they are also petitioners, prima facie proof of death and venue. Contestants of a will have the burden of establishing lack of testamentary intent or capacity, undue influence, fraud, duress, mistake, or revocation. Parties have the ultimate burden of persuasion as to matters with respect to which they have the initial burden of proof.

History: **En. 91A-3-407 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-407(part).**

72-3-311. Priority of determinations in contested cases. If a will is opposed by the petition for probate of a later will revoking the former, it shall be determined first whether the later will is entitled to probate, and if a will is opposed by a petition for a declaration of intestacy, it shall be determined first whether the will is entitled to probate.

History: **En. 91A-3-407 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-407(part).**

72-3-312. Effect of final order in another state. A final order of a court of another state determining testacy, the validity or construction of a will, made in a proceeding involving notice to and an opportunity for contest by all interested persons must be accepted as determinative by the courts of this state if it includes or is based upon a finding that the decedent was domiciled at his death in the state where the order was made.

History: **En. 91A-3-408 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-408.**

72-3-313. Order for formal probate. (1) After the time required for any notice has expired, upon proof of notice, and after any hearing that may be necessary, if the court finds that the testator is dead, venue is proper, and that the proceeding was commenced within the limitation prescribed by 72-3-122, it shall determine the decedent's domicile at death, his heirs, and his state of testacy. Any will found to be valid and unrevoked shall be formally probated.

(2) Termination of any previous informal appointment of a personal representative, which may be appropriate in view of the relief requested and findings, is governed by 72-3-523.

(3) The petition shall be dismissed or appropriate amendment allowed if the court is not satisfied that the alleged decedent is dead.

History: **En. 91A-3-409 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-409(part).**

72-3-314. Probate of more than one instrument — order. (1) If two or more instruments are offered for probate before a final order is entered in a formal testacy proceeding, more than one instrument may be probated if neither expressly revokes the other or contains provisions which work a total revocation by implication.

(2) If more than one instrument is probated, the order shall indicate what provisions control in respect to the nomination of an executor, if any. The order may but need not indicate how any provisions of a particular instrument are affected by the other instrument. After a final order in a testacy proceeding has been entered, no petition for probate of any other instrument of the decedent may be entertained, except incident to a petition to vacate or modify a previous probate order and subject to the time limits of 72-3-317.

History: **En. 91A-3-410 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-410.**

72-3-315. Order of partial intestacy. If it becomes evident in the course of a formal testacy proceeding that, though one or more instruments are entitled to be probated, the decedent's estate is or may be partially intestate, the court shall enter an order to that effect.

History: **En. 91A-3-411 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-411.**

72-3-316. Will from place where probate unprovided for. A will from a place which does not provide for probate of a will after death may be proved for probate in this state by a duly authenticated certificate of its legal custodian that the copy introduced is a true copy and that the will has become effective under the law of the other place.

History: **En. 91A-3-409 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-409(part).**

72-3-317. Effect of formal testacy order — modification or vacation — fact of death — remedies of alleged decedent. Subject to appeal and subject to vacation as provided herein and in 72-3-318, a formal testacy order under 72-3-313 through 72-3-316, including an order that the decedent left no valid will and determining heirs, is final as to all persons with respect to all issues concerning the decedent's estate that the court considered or might have considered incident to its rendition relevant to the question of whether the decedent left a valid will and to the determination of heirs, except that:

(1) the court shall entertain a petition for modification or vacation of its order and probate of another will of the decedent if it is shown that the proponents of the later-offered will were unaware of its existence at the time of the earlier proceeding or were unaware of the earlier proceeding and were given no notice thereof, except by publication;

(2) if intestacy of all or part of the estate has been ordered, the determination of heirs of the decedent may be reconsidered if it is shown that one or more persons were omitted from the determination and it is also shown that the persons were unaware of their relationship to the decedent, were unaware of his death, or were given no notice of any proceeding concerning his estate, except by publication;

(3) a petition for vacation under either (1) or (2) above must be filed prior to the earlier of the following time limits:

(a) if a personal representative has been appointed for the estate, the time of entry of any order approving final distribution of the estate or, if the estate is closed by statement, 6 months after the filing of the closing statement;

(b) whether or not a personal representative has been appointed for the estate of the decedent, the time prescribed by 72-3-122 when it is no longer possible to initiate an original proceeding to probate a will of the decedent;

(c) 12 months after the entry of the order sought to be vacated;

(4) the order originally rendered in the testacy proceeding may be modified or vacated, if appropriate under the circumstances, by the order of probate of the later-offered will or the order redetermining heirs;

(5) the finding of the fact of death is conclusive as to the alleged decedent only if notice of the hearing on the petition in the formal testacy proceeding was sent by registered or certified mail addressed to the alleged decedent at his last known address and the court finds that a search under 72-3-306 was made. If the alleged decedent is not dead, even if notice was sent and search was made, he may recover estate assets in the hands of the

personal representative. In addition to any remedies available to the alleged decedent by reason of any fraud or intentional wrongdoing, the alleged decedent may recover any estate or its proceeds from distributees that is in their hands or the value of distributions received by them, to the extent that any recovery from distributees is equitable in view of all of the circumstances.

History: **En. 91A-3-412 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-412.**

72-3-318. Modification or vacation for other cause. For good cause shown, an order in a formal testacy proceeding may be modified or vacated within the time allowed for appeal.

History: **En. 91A-3-413 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-413.**

72-3-319. Formal appointment proceedings. (1) A formal proceeding for adjudication regarding the priority or qualification of one who is an applicant for appointment as personal representative or of one who previously has been appointed personal representative in informal proceedings, if an issue concerning the testacy of the decedent is or may be involved, is governed by 72-3-301 as well as by this section. In other cases, the petition shall contain or adopt the statements required by 72-3-202 and describe the question relating to priority or qualification of the personal representative which is to be resolved. If the proceeding precedes any appointment of a personal representative, it shall stay any pending informal appointment proceedings as well as any commenced thereafter. If the proceeding is commenced after appointment, the previously appointed personal representative, after receipt of notice thereof, shall refrain from exercising any power of administration except as necessary to preserve the estate or unless the court orders otherwise.

(2) After notice to interested persons, including all persons interested in the administration of the estate as successors under the applicable assumption concerning testacy, any previously appointed personal representative, and any person having or claiming priority for appointment as personal representative, the court shall determine who is entitled to appointment under 72-3-501 through 72-3-508, make a proper appointment, and if appropriate, terminate any prior appointment found to have been improper as provided in cases of removal under 72-3-526.

History: **En. 91A-3-414 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-414.**

Part 4

Supervised Administration

72-3-401. Supervised administration — nature and purpose. Supervised administration is a single in rem proceeding to secure complete administration and settlement of a decedent's estate under the continuing authority of the court, which extends until entry of an order approving distribution of the estate and discharging the personal representative or other order terminating the proceeding.

History: **En. 91A-3-501 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-501(part).**

72-3-402. Petition and order. (1) A petition for supervised administration may be filed by any interested person or by a personal representative at any time or the prayer for supervised administration may be joined with a petition in a testacy or appointment proceeding. If the testacy of the decedent and the priority and qualification of any personal representative have not been adjudicated previously, the petition for supervised administration shall include the matters required of a petition in a formal testacy proceeding and the notice requirements and procedures applicable to a formal testacy proceeding apply. If not previously adjudicated, the court shall adjudicate the testacy of the decedent and questions relating to the priority and qualifications of the personal representative in any case involving a request for supervised administration, even though the request for supervised administration may be denied.

(2) After notice to interested persons, the court shall order supervised adminstration of a decedent's estate:

(a) if the decedent's will directs supervised administration, unless the court finds that circumstances bearing on the need for supervised administration have changed since the execution of the will and that there is no necessity for supervised administration;

(b) only upon a finding that it is necessary for protection of persons interested in the estate if the decedent's will directs unsupervised administration; or

(c) in other cases if the court finds that supervised administration is necessary under the circumstances.

History: **En. 91A-3-502 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-502.**

72-3-403. Effect on other proceedings and previously appointed personal representative. (1) The pendency of a proceeding for supervised administration of a decedent's estate stays action on any informal application then pending or thereafter filed.

(2) If a will has been previously probated in informal proceedings, the effect of the filing of a petition for supervised administration is as provided for formal testacy proceedings by 72-3-303 and 72-3-304.

(3) After he has received notice of the filing of a petition for supervised administration, a personal representative who has been appointed previously shall not exercise his power to distribute any estate. The filing of the petition does not affect his other powers and duties unless the court restricts the exercise of any of them pending full hearing on the petition.

History: **En. 91A-3-503 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-503.**

72-3-404. Powers and duties of personal representative. (1) A supervised personal representative is responsible to the court, as well as to the interested parties, and is subject to directions concerning the estate made by the court on its own motion or on the motion of any interested party.

(2) Except as otherwise provided in this part or as otherwise ordered by the court, a supervised personal representative has the same duties and powers as a personal representative who is not supervised.

(3) Unless restricted by the court, a supervised personal representative has, without interim orders approving exercise of a power, all powers of personal representatives under this code, but he shall not exercise his power to make any distribution of the estate without prior order of the court. Any other restriction on the power of a personal representative which may be

ordered by the court must be endorsed on his letters of appointment and unless so endorsed is ineffective as to persons dealing in good faith with the personal representative.

History: En. 91A-3-501, 91A-3-504 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-501(part), 91A-3-504.

72-3-405. Interim orders. Interim orders approving or directing partial distributions or granting other relief may be issued by the court at any time during the pendency of a supervised administration on the application of the personal representative or any interested person.

History: En. 91A-3-505 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-505(part).

72-3-406. Closing orders. Unless otherwise ordered by the court, supervised administration is terminated by order in accordance with time restrictions, notices, and contents of orders prescribed for proceedings under 72-3-1001 and 72-3-1002.

History: En. 91A-3-505 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-505(part).

Part 5

Personal Representative Appointment Priorities, Bond, and Termination

72-3-501. Who may not be personal representative. No person is qualified to serve as a personal representative who is:

(1) under the age of 18;

(2) a person whom the court finds unsuitable in formal proceedings.

History: En. 91A-3-203 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 1, Ch. 223, L. 1977; R.C.M. 1947, 91A-3-203(6).

72-3-502. Priorities for appointment. Whether the proceedings are formal or informal, persons who are not disqualified have priority for appointment in the following order:

(1) the person with priority as determined by a probated will including a person nominated by a power conferred in a will;

(2) the surviving spouse of the decedent who is a devisee of the decedent;

(3) other devisees of the decedent;

(4) the surviving spouse of the decedent;

(5) other heirs of the decedent;

(6) public administrator;

(7) 45 days after the death of the decedent, any creditor.

History: En. 91A-3-203 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 1, Ch. 223, L. 1977; R.C.M. 1947, 91A-3-203(1).

72-3-503. Objection to appointment. (1) An objection to an appointment can be made only in formal proceedings.

(2) In case of objection the priorities stated in 72-3-502 apply, except that:

(a) if the estate appears to be more than adequate to meet exemptions and costs of administration but inadequate to discharge anticipated unsecured claims, the court, on petition of creditors, may appoint any qualified person;

(b) in case of objection to appointment of a person other than one whose priority is determined by will by an heir or devisee appearing to have a substantial interest in the estate, the court may appoint a person who is acceptable to heirs and devisees whose interests in the estate appear to be worth in total more than half of the probable distributable value or, in default of this accord, any suitable person.

History: **En. 91A-3-203 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 1, Ch. 223, L. 1977; R.C.M. 1947, 91A-3-203(2).**

72-3-504. Renunciation — nomination of other — two or more persons sharing priority. (1) A person entitled to letters under (2) through (5) of 72-3-502 may nominate a qualified person to act as personal representative.

(2) Any person entitled to letters may renounce his right to nominate or to an appointment by appropriate writing filed with the court.

(3) When two or more persons share a priority, those of them who do not renounce must concur in nominating another to act for them or in applying for appointment. If they are unable to concur in nominating another to act for them or in applying for appointment, the court may appoint any qualified person.

History: **En. 91A-3-203 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 1, Ch. 223, L. 1977; R.C.M. 1947, 91A-3-203(3).**

72-3-505. Rights of conservators relating to appointment. Conservators of the estates of protected persons or, if there is no conservator, any guardian except a guardian ad litem of a minor or incapacitated person may exercise the same right to nominate, to object to another's appointment, or to participate in determining the preference of a majority in interest of the heirs and devisees that the protected person or ward would have if qualified for appointment.

History: **En. 91A-3-203 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 1, Ch. 223, L. 1977; R.C.M. 1947, 91A-3-203(4).**

72-3-506. Priority of domiciliary personal representative. A personal representative appointed by a court of the decedent's domicile has priority over all other persons, except where the decedent's will nominates different persons to be personal representative in this state and in the state of domicile. The domiciliary personal representative may nominate another, who shall have the same priority as the domiciliary personal representative.

History: **En. 91A-3-203 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 1, Ch. 223, L. 1977; R.C.M. 1947, 91A-3-203(7).**

72-3-507. Appointment of one not having priority. Appointment of one who does not have priority, including priority resulting from renunciation or nomination determined pursuant to 72-3-504, may be made only in formal proceedings. Before appointing one without priority, the court must determine that those having priority, although given notice of the proceedings, have failed to request appointment or to nominate another for appointment and that administration is necessary.

History: **En. 91A-3-203 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 1, Ch. 223, L. 1977; R.C.M. 1947, 91A-3-203(5).**

72-3-508. Application of priority provisions to appointment of successor. Sections 72-3-501 through 72-3-507 govern priority for appointment of a successor personal representative but do not apply to the selection of a special administrator.

History: En. 91A-3-203 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 1, Ch. 223, L. 1977; R.C.M. 1947, 91A-3-203(8).

72-3-509 and 72-3-510 reserved.

72-3-511. Acceptance of appointment — consent to jurisdiction. By accepting appointment, a personal representative submits personally to the jurisdiction of the court in any proceeding relating to the estate that may be instituted by any interested person. Notice of any proceeding shall be delivered to the personal representative or mailed to him by ordinary first-class mail at his address as listed in the application or petition for appointment or as thereafter reported to the court and to his address as then known to the petitioner.

History: En. 91A-3-602 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-602.

72-3-512. Qualification — filing of bond and statement of acceptance. Prior to receiving letters, a personal representative shall qualify by filing with the appointing court any required bond and a statement of acceptance of the duties of the office.

History: En. 91A-3-601 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-601.

72-3-513. Bond — when required. (1) No bond is required of a personal representative appointed in informal proceedings, except:

(a) upon the appointment of a special administrator;

(b) when an executor or other personal representative is appointed to administer an estate under a will containing an express requirement of bond; or

(c) when bond is required under 72-3-514.

(2) Bond may be required by court order at the time of appointment of a personal representative appointed in any formal proceeding, except that bond is not required of a personal representative appointed in formal proceedings if the will relieves the personal representative of bond unless bond has been requested by an interested party and the court is satisfied that it is desirable. Bond required by any will may be dispensed with in formal proceedings upon determination by the court that it is not necessary.

(3) No bond is required of any personal representative who, pursuant to statute, has deposited cash or collateral with an agency of this state to secure performance of his duties.

History: En. 91A-3-603 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-603.

72-3-514. Demand for bond by interested person. (1) Any person apparently having an interest in the estate worth in excess of $1,000 or any creditor having a claim in excess of $1,000 may make a written demand that a personal representative give bond. The demand must be filed with the clerk and a copy mailed to the personal representative, if appointment and qualification have occurred. Thereupon, bond is required, but the requirement ceases if the person demanding bond ceases to be interested in the estate or if bond is excused as provided in 72-3-513 or 72-3-515.

(2) After he has received notice and until the filing of the bond or cessation of the requirement of bond, the personal representative shall refrain from exercising any powers of his office except as necessary to preserve the estate.

(3) Failure of the personal representative to meet a requirement of bond by giving suitable bond within 30 days after receipt of notice is cause for his removal and appointment of a successor personal representative.

History: En. 91A-3-605 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-605.

72-3-515. Bond amount — security — reduction. (1) If bond is required and the provisions of the will or order do not specify the amount, unless stated in his application or petition, the person qualifying shall file a statement under oath with the clerk indicating his best estimate of the value of the personal estate of the decedent and of the income expected from the personal and real estate during the next year, and he shall execute and file a bond with the clerk or give other suitable security in an amount not less than the estimate.

(2) The clerk shall determine that the bond is duly executed by a corporate surety or one or more individual sureties whose performance is secured by pledge of personal property, mortgage on real property, or other adequate security.

(3) The clerk may permit the amount of the bond to be reduced by the value of assets of the estate deposited with a domestic financial institution in a manner that prevents their unauthorized disposition. On petition of the personal representative or another interested person, the court may excuse a requirement of bond, increase or reduce the amount of the bond, release sureties, or permit the substitution of another bond with the same or different sureties.

History: En. 91A-3-604 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-604.

72-3-516. Terms of bond — liability of surety. (1) The following requirements and provisions apply to any bond required by this part:

(a) Bonds shall name the state as obligee for the benefit of the persons interested in the estate and shall be conditioned upon the faithful discharge by the fiduciary of all duties according to law.

(b) Unless otherwise provided by the terms of the approved bond, sureties are jointly and severally liable with the personal representative and with each other. The address of sureties shall be stated in the bond.

(c) By executing an approved bond of a personal representative, the surety consents to the jurisdiction of the probate court which issued letters to the primary obligor in any proceedings pertaining to the fiduciary duties of the personal representative and naming the surety as a party. Notice of any proceeding shall be delivered to the surety or mailed to him by registered or certified mail at his address as listed with the court where the bond is filed and to his address as then known to the petitioner.

(d) On petition of a successor personal representative, any other personal representative of the same decedent, or any interested person, a proceeding in the court may be initiated against a surety for breach of the obligation of the bond of the personal representative.

(e) The bond of the personal representative is not void after the first recovery but may be proceeded against from time to time until the whole penalty is exhausted.

(2) No action or proceeding may be commenced against the surety on any matter as to which an action or proceeding against the primary obligor is barred by adjudication or limitation.

History: En. 91A-3-606 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-606.

72-3-517 through 72-3-520 reserved.

72-3-521. Termination of appointment — general effect. Termination of appointment of a personal representative occurs as indicated in 72-3-522 to 72-3-526, inclusive. Termination ends the right and power pertaining to the office of personal representative as conferred by this code or any will, except that a personal representative, at any time prior to distribution or until restrained or enjoined by court order, may perform acts necessary to protect the estate and may deliver the assets to a successor representative. Termination does not discharge a personal representative from liability for transactions or omissions occurring before termination or relieve him of the duty to preserve assets subject to his control, to account therefor, and to deliver the assets. Termination does not affect the jurisdiction of the court over the personal representative but terminates his authority to represent the estate in any pending or future proceeding.

History: En. 91A-3-608 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-608.

72-3-522. Termination of appointment — death or disability. (1) The death of a personal representative or the appointment of a conservator for the estate of a personal representative terminates his appointment.

(2) Until appointment and qualification of a successor or special representative to replace the deceased or protected representative, the representative of the estate of the deceased or protected personal representative, if any, has the duty to protect the estate possessed and being administered by his decedent or ward at the time his appointment terminates, has the power to perform acts necessary for protection, and shall account for and deliver the estate assets to a successor or special personal representative upon his appointment and qualification.

History: En. 91A-3-609 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-609.

72-3-523. Termination of appointment — change of testacy status. Except as otherwise ordered in formal proceedings, the probate of a will subsequent to the appointment of a personal representative in intestacy or under a will which is superseded by formal probate of another will or the vacation of an informal probate of a will subsequent to the appointment of the personal representative thereunder does not terminate the appointment of the personal representative although his powers may be reduced as provided in 72-3-304. Termination occurs upon appointment in informal or formal appointment proceedings of a person entitled to appointment under the later assumption concerning testacy. If no request for new appointment is made within 30 days after expiration of time for appeal from the order in formal testacy proceedings or from the informal probate changing the assumption concerning testacy, the previously appointed personal representative upon request may be appointed personal representative under the subsequently probated will or as in intestacy, as the case may be.

History: **En. 91A-3-612 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-612.**

72-3-524. Termination of appointment — closing of estate. (1) An appointment of a personal representative terminates, as provided in 72-3-1004, 1 year after the filing of a closing statement.

(2) An order closing an estate as provided in 72-3-1001, 72-3-1002, or 72-3-1003 terminates an appointment of a personal representative.

History: **En. 91A-3-610 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-610(1), (2).**

72-3-525. Termination of appointment — voluntary. A personal representative may resign his position by filing a written statement of resignation with the clerk after he has given at least 15 days' written notice to the persons known to be interested in the estate. If no one applies or petitions for appointment of a successor representative within the time indicated in the notice, the filed statement of resignation is ineffective as a termination of appointment and in any event is effective only upon the appointment and qualification of a successor representative and delivery of the assets to him.

History: **En. 91A-3-610 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-610(3).**

72-3-526. Termination of appointment — removal for cause. (1) A person interested in the estate may petition for removal of a personal representative for cause at any time. Upon filing of the petition, the court shall fix a time and place for hearing. Notice shall be given by the petitioner to the personal representative and to other persons as the court may order. Except as otherwise ordered as provided in 72-3-617, after receipt of notice of removal proceedings, the personal representative shall not act except to account, to correct maladministration, or preserve the estate. If removal is ordered, the court also shall direct by order the disposition of the assets remaining in the name of or under the control of the personal representative being removed.

(2) Cause for removal exists:

(a) when removal would be in the best interests of the estate; or

(b) if it is shown that a personal representative or the person seeking his appointment intentionally misrepresented material facts in the proceedings leading to his appointment or that the personal representative has disregarded an order of the court, has become incapable of discharging the duties of his office, or has mismanaged the estate or failed to perform any duty pertaining to the office.

(3) Unless the decedent's will directs otherwise, a personal representative appointed at the decedent's domicile, incident to securing appointment of himself or his nominee as ancillary personal representative, may obtain removal of another who was appointed personal representative in this state to administer local assets.

History: **En. 91A-3-611 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-611.**

72-3-527. Successor personal representative. (1) Parts 2 and 3 of this chapter govern proceedings for appointment of a personal representative to succeed one whose appointment has been terminated.

(2) After appointment and qualification, a successor personal representative may be substituted in all actions and proceedings to which the former personal representative was a party, and no notice, process, or claim which was given or served upon the former personal representative need be given to or served upon the successor in order to preserve any position or right the person giving the notice or filing the claim may thereby have obtained or preserved with reference to the former personal representative.

(3) Except as otherwise ordered by the court, the successor personal representative has the powers and duties in respect to the continued administration which the former personal representative would have had if his appointment had not been terminated.

History: **En. 91A-3-613 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-613.**

Part 6

Personal Representative Powers, Duties, and Compensation

72-3-601. Time of accrual of duties and powers — power of executor prior to appointment — ratification. (1) The duties and powers of a personal representative commence upon his appointment. The powers of a personal representative relate back in time to give acts by the person appointed which are beneficial to the estate occurring prior to appointment the same effect as those occurring thereafter.

(2) Prior to appointment, a person named executor in a will may carry out written instructions of the decedent relating to his body, funeral, and burial arrangements.

(3) A personal representative may ratify and accept acts on behalf of the estate done by others where the acts would have been proper for a personal representative.

History: **En. 91A-3-701 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-701.**

72-3-602. Priority among different letters. A person to whom general letters are issued first has exclusive authority under the letters until his appointment is terminated or modified. If, through error, general letters are afterwards issued to another, the first appointed representative may recover any property of the estate in the hands of the representative subsequently appointed, but the acts of the latter done in good faith before notice of the first letters are not void for want of validity of appointment.

History: **En. 91A-3-702 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-702.**

72-3-603. Notice of appointment to heirs and devisees. (1) Not later than 30 days after his appointment, every personal representative, except any special administrator, shall give information of his appointment to the heirs and devisees, including, if there has been no formal testacy proceeding and if the personal representative was appointed on the assumption that the decedent died intestate, the devisees in any will mentioned in the application for appointment of a personal representative. The information shall be delivered or sent by ordinary mail to each of the heirs and devisees whose address is reasonably available to the personal representative. The duty does not extend to require information to persons who have been adjudicated in a prior formal testacy proceeding to have no interest in the estate.

(2) The information shall:

(a) include the name and address of the personal representative;

(b) indicate that it is being sent to persons who have or may have some interest in the estate being administered;

(c) indicate whether bond has been filed; and

(d) describe the court where papers relating to the estate are on file.

(3) The personal representative's failure to give this information is a breach of his duty to the persons concerned but does not affect the validity of his appointment, his powers, or other duties.

(4) A personal representative may inform other persons of his appointment by delivery or ordinary first-class mail.

History: En. 91A-3-705 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-705.

72-3-604. Standing to sue. Except as to proceedings which do not survive the death of the decedent, a personal representative of a decedent domiciled in this state at his death has the same standing to sue and be sued in the courts of this state and the courts of any other jurisdiction as his decedent had immediately prior to death.

History: En. 91A-3-703 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-703(3).

72-3-605. Personal representative to proceed without court order — power to invoke jurisdiction. A personal representative shall proceed expeditiously with the settlement and distribution of a decedent's estate and, except as otherwise specified under this code or ordered in regard to a supervised personal representative, do so without adjudication, order, or direction of the court, but he may invoke the jurisdiction of the court, in proceedings authorized by this code, to resolve questions concerning the estate or its administration.

History: En. 91A-3-704 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-704.

72-3-606. Possession and protection of estate. (1) Except as otherwise provided by a decedent's will and subject to the provisions of chapter 12, part 7, every personal representative has a right to and shall take possession or control of the decedent's property, except that any real property or tangible personal property may be left with or surrendered to the person presumptively entitled thereto unless or until, in the judgment of the personal representative, possession of the property by him will be necessary for purposes of administration. The request by a personal representative for delivery of any property possessed by an heir or devisee is conclusive evidence, in any action against the heir or devisee for possession thereof, that the possession of the property by the personal representative is necessary for purposes of administration.

(2) The personal representative shall pay taxes on and take all steps reasonably necessary for the management, protection, and preservation of the estate in his possession. He may maintain an action to recover possession of property or to determine the title thereto.

History: En. 91A-3-708 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-708.

72-3-607. Inventory — appraisal — copy to department of revenue. (1) Within 3 months after his appointment, a personal representative, who is not a special administrator or a successor to another representative who has previously discharged this duty, shall prepare and file or mail an inventory, which inventory shall include listing of all property which:

(a) the decedent owned, had an interest in or control over, individually, in common, or jointly, or otherwise had at the time of his death;

(b) the decedent had possessory or dispository rights over at the time of his death or had disposed of for less than its fair market value within 3 years of his death; or

(c) was affected by the decedent's death for the purpose of inheritance or estate taxes.

(2) The inventory shall include a statement of the full and true value of the decedent's interest in every item listed in such inventory. In this connection the personal representative shall appoint one or more qualified and disinterested persons to assist him in ascertaining the fair market value as of the date of the decedent's death of all assets included in the estate. Different persons may be employed to appraise different kinds of assets included in the estate. The names and addresses of any appraiser shall be indicated on the inventory with the item or items he appraised.

(3) The personal representative shall send a copy of the inventory to interested persons who request it, or he may file the original of the inventory with the court. In any event, a copy of the inventory and statement of value shall be mailed to the department of revenue.

History: En. 91A-3-706 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 4, Ch. 516, L. 1975; R.C.M. 1947, 91A-3-706.

72-3-608. Repealed. Sec. 18, Ch. 52, L. 1981.

History: En. 91A-3-715.1 by Sec. 6, Ch. 516, L. 1975; R.C.M. 1947, 91A-3-715.1.

72-3-609. Supplementary inventory — copy to department of revenue. If any property not included in the original inventory comes to the knowledge of a personal representative or if the personal representative learns that the value or description indicated in the original inventory for any item is erroneous or misleading, he shall make a supplementary inventory or appraisement showing the market value as of the date of the decedent's death of the new item or the revised market value or descriptions and the appraisers or other data relied upon, if any, and file it with the court if the original inventory was filed or furnish copies thereof or information thereof to persons interested in the new information and in any case shall mail a copy of it to the department of revenue.

History: En. 91A-3-707 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-707.

72-3-610. General duties — fiduciary. A personal representative is a fiduciary who shall observe the standards of care applicable to trustees under the laws of the state of Montana. A personal representative is under a duty to settle and distribute the estate of the decedent in accordance with the terms of any probated and effective will and this code and as expeditiously and efficiently as is consistent with the best interests of the estate. He shall use the authority conferred upon him by this code, the terms of the will, if any, and any order in proceedings to which he is party for the best interests of successors to the estate.

History: **En. 91A-3-703 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-703(1).**

72-3-611. No surcharge for authorized acts generally — limitation. (1) A personal representative shall not be surcharged for acts of administration or distribution if the conduct in question was authorized at the time. Subject to other obligations of administration and of this code, an informally probated will is authority to administer and distribute the estate according to its terms. Subject to the provisions of this code, an order of appointment of a personal representative, whether issued in informal or formal proceedings, is authority to distribute apparently intestate assets to the heirs of the decedent if, at the time of distribution, the personal representative is not aware of a pending testacy proceeding, a proceeding to vacate an order entered in an earlier testacy proceeding, a formal proceeding questioning his appointment or fitness to continue, or a supervised administration proceeding.

(2) Nothing in this section affects the duty of the personal representative to administer and distribute the estate in accordance with the rights of claimants, the surviving spouse, any minor and dependent children, and any pretermitted child of the decedent as described elsewhere in this code.

History: **En. 91A-3-703 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-703(2).**

72-3-612. No individual liability — exceptions — certain claims to be brought against personal representative. (1) Unless otherwise provided in the contract, a personal representative is not individually liable on a contract properly entered into in his fiduciary capacity in the course of administration of the estate unless he fails to reveal his representative capacity and identify the estate in the contract.

(2) A personal representative is individually liable for obligations arising from ownership or control of the estate or for torts committed in the course of administration of the estate only if he is personally at fault.

(3) Claims based on contracts entered into by a personal representative in his fiduciary capacity, on obligations arising from ownership or control of the estate, or on torts committed in the course of estate administration may be asserted against the estate by proceeding against the personal representative in his fiduciary capacity, whether or not the personal representative is individually liable therefor.

(4) Issues of liability as between the estate and the personal representative individually may be determined in a proceeding for accounting, surcharge, or indemnification or other appropriate proceeding.

History: **En. 91A-3-808 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-808.**

72-3-613. Transactions authorized for personal representative. Except as restricted by this code or otherwise provided by the will or by an order in a formal proceeding and subject to the priorities stated in 72-3-901, a personal representative, acting reasonably for the benefit of the interested persons, may properly:

(1) retain assets owned by the decedent pending distribution or liquidation, including those in which the representative is personally interested or which are otherwise improper for trust investment;

(2) receive assets from fiduciaries or other sources;

(3) perform, compromise, or refuse performance of the decedent's contracts that continue as obligations of the estate, as he may determine under the circumstances. In performing enforceable contracts by the decedent to convey or lease land, the personal representative, among other possible courses of action, may:

(a) execute and deliver a deed of conveyance for cash payment of all sums remaining due or the purchaser's note for the sum remaining due secured by a mortgage or deed of trust on the land; or

(b) deliver a deed in escrow with directions that the proceeds, when paid in accordance with the escrow agreement, be paid to the successors of the decedent, as designated in the escrow agreement;

(4) satisfy written charitable pledges of the decedent irrespective of whether the pledges constituted binding obligations of the decedent or were properly presented as claims, if in the judgment of the personal representative the decedent would have wanted the pledges completed under the circumstances;

(5) if funds are not needed to meet debts and expenses currently payable and are not immediately distributable, deposit or invest liquid assets of the estate, including moneys received from the sale of other assets, in federally insured interest-bearing accounts, readily marketable secured loan arrangements, or other prudent investments which would be reasonable for use by trustees generally;

(6) acquire or dispose of an asset, including land in this or another state, for cash or on credit, at public or private sale and manage, develop, improve, exchange, partition, change the character of, or abandon an estate asset;

(7) make ordinary or extraordinary repairs or alterations in buildings or other structures, demolish any improvements, raze existing or erect new party walls or buildings;

(8) subdivide, develop, or dedicate land to public use; make or obtain the vacation of plats and adjust boundaries; adjust differences in valuation on exchange or partition by giving or receiving considerations; or dedicate easements to public use without consideration;

(9) enter for any purpose into a lease as lessor or lessee, with or without option to purchase or renew, for a term within or extending beyond the period of administration;

(10) enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;

(11) with the consent of the heirs or devisees or the court, abandon property when in the opinion of the personal representative it is valueless or is so encumbered or is in condition that it is of no benefit to the estate;

(12) vote stocks or other securities in person or by general or limited proxy;

(13) pay calls, assessments, and other sums chargeable or accruing against or on account of securities, unless barred by the provisions relating to claims;

(14) hold a security in the name of a nominee or in other form without disclosure of the interest of the estate, but the personal representative is liable for any act of the nominee in connection with the security so held;

(15) insure the assets of the estate against damage, loss, and liability and himself against liability as to third persons;

(16) borrow money with or without security to be repaid from the estate assets or otherwise and advance money for the protection of the estate;

(17) with the consent of the heirs or devisees or the court, effect a fair and reasonable compromise with any debtor or obligor or extend, renew, or in any manner modify the terms of any obligation owing to the estate. If the personal representative holds a mortgage, pledge, or other lien upon property of another person, he may, in lieu of foreclosure, accept a conveyance or transfer of encumbered assets from the owner thereof in satisfaction of the indebtedness secured by lien.

(18) pay taxes, assessments, compensation of the personal representative, and other expenses incident to the administration of the estate;

(19) sell or exercise stock subscription or conversion rights; consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;

(20) allocate items of income or expense to either estate income or principal, as permitted or provided by law;

(21) employ persons, including attorneys, auditors, investment advisors, or agents, even if they are associated with the personal representative, to advise or assist the personal representative in the performance of his administrative duties; act without independent investigation upon their recommendations; and, instead of acting personally, employ one or more agents to perform any act of administration, whether or not discretionary;

(22) prosecute or defend claims or proceedings in any jurisdiction for the protection of the estate and of the personal representative in the performance of his duties;

(23) sell, mortgage, or lease any real or personal property of the estate or any interest therein for cash, credit, or for part cash and part credit and with or without security for unpaid balances; provided, however, no personal representative shall, without prior court approval in a supervised proceeding, either directly or indirectly purchase any property of the estate he represents, nor shall he be interested in any such sale. All sales shall be fairly conducted and made for the best price obtainable.

(24) continue any unincorporated business or venture in which the decedent was engaged at the time of his death:

(a) in the same business form for a period of not more than 4 months from the date of appointment of a general personal representative if continuation is a reasonable means of preserving the value of the business, including good will;

(b) in the same business form for any additional period of time that may be approved by order of the court in a formal proceeding to which the persons interested in the estate are parties; or

(c) throughout the period of administration, if the business is incorporated by the personal representative and if none of the probable distributees of the business who are competent adults object to its incorporation and retention in the estate;

(25) incorporate any business or venture in which the decedent was engaged at the time of his death;

(26) satisfy and settle claims and distribute the estate as provided in this code.

History: **En. 91A-3-713 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-713.**

72-3-614. Power to recover property which is subject of void or voidable transfer. The property liable for the payment of unsecured debts of a decedent includes all property transferred by him by any means which is in law void or voidable as against his creditors, and subject to prior liens, the right to recover this property, so far as necessary for the payment of unsecured debts of the decedent, is exclusively in the personal representative.

History: **En. 91A-3-709 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-709.**

72-3-615. Transaction involving conflict of interest — voidable — exceptions. Any sale or encumbrance to the personal representative, his spouse, agent, or attorney or any corporation or trust in which he has a substantial beneficial interest or any transaction which is affected by a substantial conflict of interest on the part of the personal representative is voidable by any person interested in the estate except one who has consented after fair disclosure, unless:

(1) the will or a contract entered into by the decedent expressly authorized the transaction; or

(2) the transaction is approved by the court after notice to interested persons.

History: **En. 91A-3-711 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-711.**

72-3-616. Improper exercise of power — breach of fiduciary duty. (1) If any exercise of power concerning the estate is improper, the personal representative is liable to interested persons for damage or loss resulting from breach of his fiduciary duty to the same extent as a trustee of an express trust.

(2) The rights of purchasers and others dealing with a personal representative shall be determined as provided in 72-3-615 and 72-3-618.

History: **En. 91A-3-710 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-710.**

72-3-617. Order restraining personal representative. (1) On petition of any person who appears to have an interest in the estate, the court by temporary order may restrain a personal representative from performing specified acts of administration, disbursement, or distribution or exercise of any powers or discharge of any duties of his office or make any other order to secure proper performance of his duty if it appears to the court that the personal representative otherwise may take some action which would jeopardize unreasonably the interest of the applicant or of some other interested person. Persons with whom the personal representative may transact business may be made parties.

(2) The matter shall be set for hearing within 10 days unless the parties otherwise agree. Notice as the court directs shall be given to the personal representative and his attorney of record, if any, and to any other parties named defendant in the petition.

History: **En. 91A-3-607 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-607.**

72-3-618. Persons dealing with personal representative — protection. (1) A person who in good faith and without notice either assists a personal representative or deals with him for value is protected as if the personal representative properly exercised his power. The fact that a person knowingly deals with a personal representative does not alone require the person to inquire into the existence of a power or the propriety of its exercise. Except for restrictions on powers of supervised personal representatives which are endorsed on letters as provided in 72-3-404(3), no provision in any will or order of court purporting to limit the power of a personal representative is effective except as to persons with actual knowledge thereof.

(2) A person is not bound to see to the proper application of estate assets paid or delivered to a personal representative.

(3) The protection here expressed extends to instances in which some procedural irregularity or jurisdictional defect occurred in proceedings leading to the issuance of letters, including a case in which the alleged decedent is found to be alive. The protection here expressed is not by substitution for that provided by comparable provisions of the laws relating to commercial transactions and laws simplifying transfers of securities by fiduciaries, nor does it in any way limit the provisions of 72-16-432 and 72-16-433.

History: **En. 91A-3-712 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-712.**

72-3-619 and 72-3-620 reserved.

72-3-621. Powers and duties of successor personal representative. A successor personal representative has the same power and duty as the original personal representative to complete the administration and distribution of the estate as expeditiously as possible, but he shall not exercise any power expressly made personal to the executor named in the will.

History: **En. 91A-3-716 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-716.**

72-3-622. Corepresentatives — when joint action required. If two or more persons are appointed corepresentatives and unless the will provides otherwise, the concurrence of all is required on all acts connected with the administration and distribution of the estate. This restriction does not apply:

(1) when any corepresentative receives and receipts for property due the estate;

(2) when the concurrence of all cannot readily be obtained in the time reasonably available for emergency action necessary to preserve the estate; or

(3) when a corepresentative has been delegated to act for the others.

History: **En. 91A-3-717 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-717(part).**

72-3-623. Persons dealing with single corepresentative — protection. Persons dealing with a corepresentative, if actually unaware that another has been appointed to serve with him or if advised by the personal representative with whom they deal that he has authority to act alone for any of the reasons mentioned herein, are as fully protected as if the person with whom they dealt had been the sole personal representative.

History: **En. 91A-3-717 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-717(part).**

72-3-624. Powers of remaining corepresentative. Unless the terms of the will otherwise provide, every power exercisable by personal corepresentatives may be exercised by the one or more remaining after the appointment of one or more is terminated, and if one of two or more nominated as coexecutors is not appointed, those appointed may exercise all the powers incident to the office.

History: **En. 91A-3-718 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-718.**

72-3-625 through 72-3-630 reserved.

72-3-631. Compensation of personal representative. (1) A personal representative is entitled to reasonable compensation for his services. Such compensation shall not exceed 3% of the first $40,000 of the value of the estate as reported for federal estate tax or state inheritance tax purposes, whichever is larger, and 2% of the value of the estate in excess of $40,000 as reported for federal estate tax or state inheritance tax purposes, whichever is larger. However, a personal representative is entitled to a minimum compensation of the lesser of $100 or the value of the gross estate.

(2) In proceedings conducted for the termination of joint tenancies, the compensation of the personal representative shall not exceed 2% of the interest passing.

(3) In proceedings conducted for the termination of a life estate, the compensation allowed the personal representative shall not exceed 2% of the value of the life estate if it is terminated in connection with a probate or joint tenancy termination. If a life estate is terminated separately, the personal representative's compensation shall not exceed 2% of the value of the estate, except that it shall not be less than $100.

(4) If there is more than one personal representative, only one compensation is allowed.

(5) The court may allow additional compensation for extraordinary services. Such additional compensation shall not be greater than the amount which is allowed for the original compensation.

(6) If the will provides for the compensation of the personal representative and there is no contract with the decedent regarding compensation, the personal representative may renounce the provision before qualifying and be entitled to compensation under the terms of this section. A personal representative also may renounce his right to all or any part of the compensation. A written renunciation of fee may be filed with the court.

History: **En. 91A-3-719 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-719; amd. Sec. 1, Ch. 424, L. 1979.**

72-3-632. Expenses of personal representative in estate litigation. If any personal representative or person nominated as personal representative defends or prosecutes any proceeding in good faith, whether successful or not, he is entitled to receive from the estate his necessary expenses and disbursements, including reasonable attorneys' fees incurred.

History: **En. 91A-3-721 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-721.**

72-3-633. Compensation of attorney. (1) If the services of an attorney are engaged by the personal representative, the compensation of such attorney shall not exceed 1 ½ times the compensation allowable to the personal representative.

(2) If the services of an attorney are engaged by the personal representative to assist in the termination of joint tenancies, the compensation allowed the attorney shall not exceed 3% of the interest passing.

(3) If the services of an attorney are engaged in connection with the termination of a life estate, the compensation allowed the attorney shall not exceed 3% of the value of the life estate if it is terminated in connection with a probate or joint tenancy termination. If a life estate is terminated separately, the attorney's compensation shall not exceed 3%, except that it shall not be less than $100.

(4) If the services of more than one attorney are engaged, only one compensation shall be allowed.

(5) In cases where further compensation may be allowed to an attorney, the same must be fixed and determined by the court upon good cause shown after notice and hearing of an application therefor.

History: En. 91A-3-720 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-720.

72-3-634. Proceedings for review of employment of agents and compensation of personal representatives and employees. (1) Upon the filing of a motion for settlement of fees by the court filed by an interested person, the personal representative, or the person employed by the personal representative and after notice to all interested persons, the propriety of employment of any person by a personal representative, including any attorney, auditor, investment advisor, or other specialized agent or assistant, the reasonableness of the compensation of any person so employed, or the reasonableness of the compensation determined by the personal representative for his own services shall be reviewed and determined by the court.

(2) In any dispute concerning fees, the court shall set the fee.

(3) Any person who has received excessive compensation from an estate for services rendered may be ordered to make appropriate refunds.

History: En. 91A-3-722 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-722.

Part 7

Special Administrator

72-3-701. Special administrator — how and when appointed. A special administrator may be appointed:

(1) informally by the clerk on the application of any interested person when necessary to protect the estate of a decedent prior to the appointment of a general personal representative or if a prior appointment has been terminated as provided in 72-3-522;

(2) in a formal proceeding by order of the court on the petition of any interested person and finding, after notice and hearing, that appointment is necessary to preserve the estate or to secure its proper administration, including its administration in circumstances where a general personal representative cannot or should not act. If it appears to the court that an emergency exists, appointment may be ordered without notice.

History: En. 91A-3-614 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-614.

72-3-702. Special administrator — who may be appointed. (1) If a special administrator is to be appointed pending the probate of a will which is the subject of a pending application or petition for probate, the person named executor in the will shall be appointed if available and qualified.

(2) In other cases, any proper person may be appointed special administrator.

History: **En. 91A-3-615 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-615.**

72-3-703. Special administrator appointed informally — powers and duties. A special administrator appointed by the clerk in informal proceedings pursuant to 72-3-701(1) has the duty to collect and manage the assets of the estate, to preserve them, to account therefor, and to deliver them to the general personal representative upon his qualification. The special administrator has the power of a personal representative under the code necessary to perform his duties.

History: **En. 91A-3-616 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-616.**

72-3-704. Special administrator — formal proceedings — power and duties. A special administrator appointed by order of the court in any formal proceeding has the power of a general personal representative, except as limited in the appointment and duties as prescribed in the order. The appointment may be for a specified time, to perform particular acts, or on other terms as the court may direct.

History: **En. 91A-3-617 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-617.**

72-3-705. Special administrator — termination of appointment. The appointment of a special administrator terminates in accordance with the provisions of the order of appointment or on the appointment of a general personal representative. In other cases, the appointment of a special administrator is subject to termination as provided in 72-3-521 through 72-3-526.

History: **En. 91A-3-618 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-618.**

Part 8

Creditors' Claims

72-3-801. Notice to creditors. Unless notice has already been given under this section, a personal representative upon his appointment shall publish a notice once a week for 3 successive weeks in a newspaper of general circulation in the county announcing his appointment and address and notifying creditors of the estate to present their claims within 4 months after the date of the first publication of the notice or be forever barred, and proof of publication shall be filed with the clerk.

History: **En. 91A-3-801 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-801.**

72-3-802. Statutes of limitations — waiver — suspension. Unless an estate is insolvent, the personal representative, with the consent of all successors, may waive any defense of limitations available to the estate. If the defense is not waived, no claim which was barred by any statute of limitations at the time of the decedent's death shall be allowed or paid. The running of any statute of limitations measured from some other event than death and advertisement for claims against a decedent is suspended during the 4 months following the decedent's death but resumes thereafter as to claims not barred pursuant to the sections which follow. For purposes of any statute of limitations, the proper presentation of a claim under 72-3-804 is equivalent to commencement of a proceeding on the claim.

History: En. 91A-3-802 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-802.

72-3-803. Nonclaim — limitations on presentation of claims — exceptions. (1) With the exception of claims for taxes and claims founded on tort, all claims against a decedent's estate which arose before the death of the decedent, including claims of the state and any subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract or other legal basis, if not barred earlier by other statute of limitations, are barred against the estate, the personal representative, and the heirs and devisees of the decedent unless presented as follows:

(a) within 4 months after the date of the first publication of notice to creditors if notice is given in compliance with 72-3-801, provided claims barred by the nonclaim statute at the decedent's domicile before the first publication for claims in this state are also barred in this state; or

(b) within 3 years after the decedent's death if notice to creditors has not been published.

(2) With the exception of claims for taxes and claims founded on tort, all claims against a decedent's estate which arise at or after the death of the decedent, including claims of the state and any subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract or other legal basis, are barred against the estate, the personal representative, and the heirs and devisees of the decedent unless presented as follows:

(a) a claim based on a contract with the personal representative, within 4 months after performance by the personal representative is due;

(b) any other claim, within 4 months after it arises.

(3) Nothing in this section affects or prevents:

(a) any proceeding to enforce any mortgage, pledge, or other lien upon property of the estate; or

(b) to the limits of the insurance protection only, any proceeding to establish liability of the decedent or the personal representative for which he is protected by liability insurance.

History: En. 91A-3-803 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 1, Ch. 352, L. 1975; R.C.M. 1947, 91A-3-803; amd. Sec. 3, Ch. 6, L. 1979.

72-3-804. Manner of presentation of claims. Claims against a decedent's estate may be presented as follows:

(1) The claimant shall mail to the personal representative return receipt requested a written statement of the claim indicating its basis, the name and address of the claimant, and the amount claimed or may file a written statement of the claim, in the form prescribed by rule, with the clerk of the court. The claim is deemed presented on the first to occur of receipt of the written statement of claim by the personal representative or the filing of the claim

with the court. If a claim is not yet due, the date when it will become due shall be stated. If the claim is contingent or unliquidated, the nature of the uncertainty shall be stated. If the claim is secured, the security shall be described. Failure to describe correctly the security, the nature of any uncertainty, and the due date of a claim not yet due does not invalidate the presentation made.

(2) The claimant may commence a proceeding against the personal representative, in any court where the personal representative may be subjected to jurisdiction, to obtain payment of his claim against the estate, but the commencement of the proceeding must occur within the time limited for presenting the claim. No presentation of claim is required in regard to matters claimed in proceedings against the decedent which were pending at the time of his death.

(3) If a claim is presented under subsection (1), no proceeding thereon may be commenced more than 60 days after the personal representative has mailed a notice of disallowance, but in the case of a claim which is not presently due or which is contingent or unliquidated, the personal representative may consent to an extension of the 60-day period or to avoid injustice the court, on petition, may order an extension of the 60-day period, but in no event shall the extension run beyond the applicable statute of limitations.

History: En. 91A-3-804 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-804.

72-3-805. Allowance and disallowance of claims — interest on allowed claims. (1) As to claims presented in the manner described in 72-3-804 within the time limit prescribed in 72-3-803, the personal representative may mail a notice to any claimant stating that the claim has been disallowed. If, after allowing or disallowing a claim, the personal representative changes his decision concerning the claim, he shall notify the claimant. The personal representative may not change a disallowance of a claim after the time for the claimant to file a petition for allowance or to commence a proceeding on the claim has run and the claim has been barred. Every claim which is disallowed in whole or in part by the personal representative is barred so far as not allowed unless the claimant files a petition for allowance in the court or commences a proceeding against the personal representative not later than 60 days after the mailing of the notice of disallowance or partial allowance if the notice warns the claimant of the impending bar. Failure of the personal representative to mail notice to a claimant of action on his claim for 60 days after the time for original presentation of the claim has expired has the effect of a notice of disallowance.

(2) Upon the petition of the personal representative or of a claimant in a proceeding for the purpose, the court may allow in whole or in part any claim or claims presented to the personal representative or filed with the clerk of the court in due time and not barred by subsection (1) of this section. Notice in this proceeding shall be given to the claimant, the personal representative, and those other persons interested in the estate as the court may direct by order entered at the time the proceeding is commenced.

(3) A judgment in a proceeding in another court against a personal representative to enforce a claim against a decedent's estate is an allowance of the claim.

(4) Unless otherwise provided in any judgment in another court entered against the personal representative, allowed claims bear interest at the legal rate for the period commencing 60 days after the time for original presentation of the claim has expired unless based on a contract making a provision for interest, in which case they bear interest in accordance with that provision.

History: **En. 91A-3-806 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 7, Ch. 516, L. 1975; R.C.M. 1947, 91A-3-806.**

72-3-806. Counterclaims — deduction. (1) In allowing a claim, the personal representative may deduct any counterclaim which the estate has against the claimant. In determining a claim against an estate, a court shall reduce the amount allowed by the amount of any counterclaims and, if the counterclaims exceed the claim, render a judgment against the claimant in the amount of the excess.

(2) A counterclaim, liquidated or unliquidated, may arise from a transaction other than that upon which the claim is based. A counterclaim may give rise to relief exceeding in amount or different in kind from that sought in the claim.

History: **En. 91A-3-811 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-811.**

72-3-807. Classification of claims as to priority of payment. (1) If the applicable assets of the estate are insufficient to pay all claims in full, the personal representative shall make payment in the following order:

(a) costs and expenses of administration;

(b) reasonable funeral expenses and reasonable and necessary medical and hospital expenses of the last illness of the decedent, including compensation of persons attending him;

(c) federal estate and Montana state estate and inheritance taxes;

(d) debts with preference under federal and Montana law;

(e) other federal and Montana state taxes;

(f) all other claims.

(2) No preference shall be given in the payment of any claim over any other claim of the same class, and a claim due and payable shall not be entitled to a preference over claims not due.

History: **En. 91A-3-805 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 2, Ch. 352, L. 1975; R.C.M. 1947, 91A-3-805.**

72-3-808. Payment of claims. (1) Upon the expiration of 4 months from the date of the first publication of the notice to creditors, the personal representative shall proceed to pay the claims allowed against the estate in the order of priority prescribed after making provision for homestead, family, and support allowances, for claims already presented which have not yet been allowed or whose allowance has been appealed, and for unbarred claims which may yet be presented, including costs and expenses of administration.

(2) By petition to the court in a proceeding for the purpose or by appropriate motion if the administration is supervised, a claimant whose claim has been allowed but not paid as provided herein may secure an order directing the personal representative to pay the claim to the extent that funds of the estate are available for the payment.

(3) The personal representative at any time may pay any just claim which has not been barred, with or without formal presentation, but he is personally liable to any other claimant whose claim is allowed and who is injured by such payment if:

(a) the payment was made before the expiration of the time limit stated in subsection (1) and the personal representative failed to require the payee to give adequate security for the refund of any of the payment necessary to pay other claimants; or

(b) the payment was made, due to the negligence or willful fault of the personal representative, in such manner as to deprive the injured claimant of his priority.

History: **En. 91A-3-807 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-807.**

72-3-809 and 72-3-810 reserved.

72-3-811. Secured claims. Payment of a secured claim is upon the basis of the amount allowed if the creditor surrenders his security; otherwise payment is upon the basis of one of the following:

(1) if the creditor exhausts his security before receiving payment, unless precluded by other law, upon the amount of the claim allowed less the fair value of the security; or

(2) if the creditor does not have the right to exhaust his security or has not done so, upon the amount of the claim allowed less the value of the security determined by converting it into money according to the terms of the agreement pursuant to which the security was delivered to the creditor or by the creditor and personal representative by agreement, arbitration, compromise, or litigation.

History: **En. 91A-3-809 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-809.**

72-3-812. Encumbered assets. (1) If any assets of the estate are encumbered by mortgage, pledge, lien, or other security interest, the personal representative may pay the encumbrance or any part thereof, renew or extend any obligation secured by the encumbrance, or convey or transfer the assets to the creditor in satisfaction of his lien, in whole or in part, whether or not the holder of the encumbrance has filed a claim, if it appears to be for the best interest of the estate.

(2) Payment of an encumbrance does not increase the share of the distributee entitled to the encumbered assets unless the distributee is entitled to exoneration.

History: **En. 91A-3-814 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-814.**

72-3-813. Execution and levies prohibited. No execution may issue upon nor may any levy be made against any property of the estate under any judgment against a decedent or a personal representative, but this section shall not be construed to prevent the enforcement of mortgages, pledges, or liens upon real or personal property in an appropriate proceeding.

History: **En. 91A-3-812 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-812.**

72-3-814. Claims not due and contingent or unliquidated claims. (1) If a claim which will become due at a future time or a contingent or unliquidated claim becomes due or certain before the distribution of the estate and if the claim has been allowed or established by a proceeding, it is paid in the same manner as presently due and absolute claims of the same class.

(2) In other cases the personal representative or, on petition of the personal representative or the claimant in a special proceeding for the purpose, the court may provide for payment as follows:

(a) If the claimant consents, he may be paid the present or agreed value of the claim, taking any uncertainty into account.

(b) Arrangement for future payment or possible payment on the happening of the contingency or on liquidation may be made by creating a trust, giving a mortgage, obtaining a bond or security from a distributee, or otherwise.

History: **En. 91A-3-810 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-810.**

72-3-815. Compromise of claims. When a claim against the estate has been presented in any manner, the personal representative with the consent of the heirs or devisees or the court may, if it appears for the best interest of the estate, compromise the claim, whether due or not due, absolute or contingent, liquidated or unliquidated.

History: **En. 91A-3-813 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-813.**

72-3-816 through 72-3-820 reserved.

72-3-821. Administration in more than one state — payment of claims. (1) All assets of estates being administered in this state are subject to all claims, allowances, and charges existing or established against the personal representative wherever appointed.

(2) If the estate either in this state or as a whole is insufficient to cover all family exemptions and allowances determined by the law of the decedent's domicile, prior charges and claims, after satisfaction of the exemptions, allowances, and charges, each claimant whose claim has been allowed either in this state or elsewhere in administrations of which the personal representative is aware is entitled to receive payment of an equal proportion of his claim. If a preference or security in regard to a claim is allowed in another jurisdiction but not in this state, the creditor so benefited is to receive dividends from local assets only upon the balance of his claim after deducting the amount of the benefit.

(3) In case the family exemptions and allowances, prior charges and claims of the entire estate exceed the total value of the portions of the estate being administered separately and this state is not the state of the decedent's last domicile, the claims allowed in this state shall be paid their proportion if local assets are adequate for the purpose, and the balance of local assets shall be transferred to the domiciliary personal representative. If local assets are not sufficient to pay all claims allowed in this state the amount to which they are entitled, local assets shall be marshalled so that each claim allowed in this state is paid its proportion as far as possible, after taking into account all dividends on claims allowed in this state from assets in other jurisdictions.

History: **En. 91A-3-815 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-815.**

72-3-822. Distribution to domiciliary personal representative — exceptions. (1) The estate of a nonresident decedent being administered by a personal representative appointed in this state shall, if there is a personal representative of the decedent's domicile willing to receive it, be distributed to the domiciliary personal representative for the benefit of the successors of the decedent unless:

(a) by virtue of the decedent's will, if any, and applicable choice of law rules, the successors are identified pursuant to the local law of this state without reference to the local law of the decedent's domicile;

(b) the personal representative of this state, after reasonable inquiry, is unaware of the existence or identity of a domiciliary personal representative; or

(c) the court orders otherwise in a proceeding for a closing order under 72-3-1001 or incident to the closing of a supervised administration.

(2) In other cases, distribution of the estate of a decedent shall be made in accordance with the other parts of this chapter.

History: En. 91A-3-816 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-816.

Part 9

Special Provisions Relating to Distribution

72-3-901. Abatement. (1) Except as provided in subsection (3) and except as provided in connection with the share of the surviving spouse who elects to take an elective share, shares of distributees abate, without any preference or priority as between real and personal property, in the following order:

(a) property not disposed of by the will;
(b) residuary devises;
(c) general devises;
(d) specific devises.

(2) For purposes of abatement, a general devise charged on any specific property or fund is a specific devise to the extent of the value of the property on which it is charged and, upon the failure or insufficiency of the property on which it is charged, a general devise to the extent of the failure or insufficiency. Abatement within each classification is in proportion to the amounts of property each of the beneficiaries would have received if full distribution of the property had been made in accordance with the terms of the will.

(3) If the will expresses an order of abatement or if the testamentary plan or the express or implied purpose of the devise would be defeated by the order of abatement stated in subsection (1), the shares of the distributees abate as may be found necessary to give effect to the intention of the testator.

(4) If the subject of a preferred devise is sold or used incident to administration, abatement shall be achieved by appropriate adjustments in or contribution from other interests in the remaining assets.

History: En. 91A-3-902 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-902.

72-3-902. Distribution in kind preferred — method — valuation. Unless a contrary intention is indicated by the will, the distributable assets of a decedent's estate shall be distributed in kind to the extent possible through application of the following provisions:

(1) A specific devisee is entitled to distribution of the thing devised to him, and a spouse or child who has selected particular assets of an estate as provided in 72-2-802 shall receive the items selected.

(2) Any homestead or family allowance or devise payable in money may be satisfied by value in kind, provided:

(a) the person entitled to the payment has not demanded payment in cash;

(b) the property distributed in kind is valued at fair market value as of the date of its distribution; and

(c) no residuary devisee has requested that the asset in question remain a part of the residue of the estate.

(3) For the purpose of valuation under subsection (2), securities regularly traded on recognized exchanges, if distributed in kind, are valued at the price for the last sale of like securities traded on the business day prior to distribution or, if there was no sale on that day, at the median between amounts bid and offered at the close of that day. Assets consisting of sums owed the decedent or the estate by solvent debtors as to which there is no known dispute or defense are valued at the sum due with accrued interest or discounted to the date of distribution. For assets which do not have readily ascertainable values, a valuation as of a date not more than 30 days prior to the date of distribution, if otherwise reasonable, controls. For purposes of facilitating distribution, the personal representative may ascertain the value of the assets as of the time of the proposed distribution in any reasonable way, including the employment of qualified appraisers, even if the assets may have been previously appraised.

(4) The residuary estate shall be distributed in kind if there is no objection to the proposed distribution and it is practicable to distribute undivided interests. In other cases, residuary property may be converted into cash for distribution.

History: **En. 91A-3-906 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-906(1).**

72-3-903. Proposal for distribution — delivery — objection. (1) After the probable charges against the estate are known, the personal representative may mail or deliver a proposal for distribution to all persons who have a right to object to the proposed distribution.

(2) The right of any distributee to object to the proposed distribution on the basis of the kind or value of asset he is to receive, if not waived earlier in writing, terminates if he fails to object in writing received by the personal representative within 30 days after mailing or delivery of the proposal.

History: **En. 91A-3-906 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-906(2).**

72-3-904. Distribution in kind — evidence of title. If distribution in kind is made, the personal representative shall execute an instrument or deed of distribution assigning, transferring, or releasing the assets to the distributee as evidence of the distributee's title to the property.

History: **En. 91A-3-907 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-907.**

72-3-905. Distribution by personal representative conclusive evidence of succession to interest by distributee. Proof that a distributee has received an instrument or deed of distribution of assets in kind or payment in distribution from a personal representative is conclusive evidence that the distributee has succeeded to the interest of the estate in the distributed assets, as against all persons interested in the estate, except that the personal representative may recover the assets or their value if the distribution was improper.

History: En. 91A-3-908 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-908.

72-3-906. Improper distribution or payment — liability of distributee or payee. Unless the distribution or payment no longer can be questioned because of adjudication, estoppel, or limitation, a distributee of property improperly distributed or paid or a claimant who was improperly paid is liable to return the property improperly received and its income since distribution if he has the property. If he does not have the property, then he is liable to return the value as of the date of disposition of the property improperly received and its income and gain received by him.

History: En. 91A-3-909 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-909.

72-3-907. Purchases from distributees protected. (1) If property distributed in kind or a security interest therein is acquired for value by a purchaser from or lender to a distributee who has received an instrument or deed of distribution from the personal representative, or is so acquired by a purchaser from or lender to a transferee from such distributee, the purchaser or lender takes title free of rights of any interested person in the estate and incurs no personal liability to the estate or to any interested person, whether or not the distribution was proper or supported by court order or the authority of the personal representative was terminated before execution of the instrument or deed.

(2) This section protects a purchaser from or lender to a distributee who, as personal representative, has executed a deed of distribution to himself, as well as a purchaser from or lender to any other distributee or his transferee. To be protected under this provision, a purchaser or lender need not inquire whether a personal representative acted properly in making the distribution in kind, even if the personal representative and the distributee are the same person, or whether the authority of the personal representative had terminated before the distribution. Any recorded instrument described in this section shall be prima facie evidence that such transfer was made for value.

(3) For purposes of this section, the term purchaser includes any lessee or other person acquiring any interest in the property for value.

History: En. 91A-3-910 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-910; amd. Sec. 9, Ch. 52, L. 1981.

Compiler's Comments

1981 Amendment: Completely rewrote the section which formerly read: "If property distributed in kind or a security interest therein is acquired by a purchaser or lender for value from a distributee who has received an instrument or deed of distribution from the personal representative, the purchaser or lender takes title free of any claims of the estate and incurs no personal liability to the estate, whether or not the distribution was proper. To be protected under this provision, a purchaser or lender need not inquire whether a personal representative acted properly in making the distribution in kind."

72-3-908 through 72-3-910 reserved.

72-3-911. Successors' rights if no administration. (1) In the absence of administration, the heirs and devisees are entitled to the estate in accordance with the terms of a probated will or the laws of intestate succession.

(2) Devisees may establish title by the probated will to devised property. Persons entitled to property by homestead allowance, exemption, or intestacy may establish title thereto by proof of the decedent's ownership, his death, and their relationship to the decedent.

(3) Successors take subject to all charges incident to administration, including the claims of creditors and allowances of surviving spouse and dependent children and subject to the rights of others resulting from abatement, retainer, advancement, and ademption.

History: En. 91A-3-901 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-901.

72-3-912. Successor's indebtedness to estate offset against interest — defenses available. The amount of a noncontingent indebtedness of a successor to the estate if due, or its present value if not due, shall be offset against the successor's interest; but the successor has the benefit of any defense which would be available to him in a direct proceeding for recovery of the debt.

History: En. 91A-3-903 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-903.

72-3-913. Interest on general pecuniary devise. General pecuniary devises bear interest at the legal rate beginning 1 year after the first appointment of a personal representative until payment, unless a contrary intent is indicated by the will.

History: En. 91A-3-904 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-904.

72-3-914. Partition for purpose of distribution. When two or more heirs or devisees are entitled to distribution of undivided interests in any real or personal property of the estate, the personal representative or one or more of the heirs or devisees may petition the court, prior to the formal or informal closing of the estate, to make partition. After notice to the interested heirs or devisees, the court shall partition the property in the same manner as provided by the law for civil actions of partition. The court may direct the personal representative to sell any property which cannot be partitioned without prejudice to the owners and which cannot conveniently be allotted to any one party.

History: En. 91A-3-911 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-911.

72-3-915. Private agreements among successors as to distribution — testamentary trustee as successor. (1) Subject to the rights of creditors and taxing authorities, competent successors may agree among themselves to alter the interests, shares, or amounts to which they are entitled under the will of the decedent or under the laws of intestacy in any way that they provide in a written contract executed by all who are affected by its provisions. The personal representative shall abide by the terms of the agreement subject to his obligation to administer the estate for the benefit of creditors, to pay all taxes and costs of administration, and to carry out the responsibilities of his office for the benefit of any successors of the decedent who are not parties.

(2) Personal representatives of decedents' estates are not required to see to the performance of trusts if the trustee thereof is another person who is willing to accept the trust. Accordingly, trustees of a testamentary trust are successors for the purposes of this section. Nothing herein relieves trustees of any duties owed to beneficiaries of trusts.

History: **En. 91A-3-912 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-912.**

72-3-916. Distribution to trustee — registration — bond. (1) Before distributing to a trustee, the personal representative may require that the trust be registered, if the state in which it is to be administered provides for registration, and that the trustee inform in writing the current beneficiaries and, if possible, one or more persons who under 72-1-303 may represent beneficiaries with future interests of his name and address and provide each with a copy of the terms of the trust which describe or affect his interest and with relevant information about the assets of the trust and the particulars relating to the administration.

(2) If the trust instrument does not excuse the trustee from giving bond, the personal representative may petition the appropriate court to require that the trustee post bond if he apprehends that distribution might jeopardize the interests of persons who are not able to protect themselves, and he may withhold distribution until the court has acted.

(3) No inference of negligence on the part of the personal representative shall be drawn from his failure to exercise the authority conferred by subsections (1) and (2).

History: **En. 91A-3-913 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-913; amd. Sec. 4, Ch. 6, L. 1979.**

72-3-917. Distribution to person under disability. A personal representative may discharge his obligation to distribute to any person under legal disability by distributing to his conservator or any other person authorized by this code or otherwise to give a valid receipt and discharge for the distribution.

History: **En. 91A-3-915 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-915.**

72-3-918. Disposition of unclaimed assets — escheat. (1) If an heir, devisee, or claimant cannot be found, the personal representative shall distribute the share of the missing person to his conservator, if any, otherwise to the department of revenue to be deposited in the state escheat fund as provided in chapter 14, as amended.

(2) Any person having any claim to a share deposited in the state escheat fund under the provisions of this code shall follow the procedures set out in chapter 14, concerning escheated estates, to claim such share.

History: **En. 91A-3-914 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-914.**

Part 10

Closing Estates

72-3-1001. Formal proceedings terminating administration — testate or intestate — order of complete settlement. (1) A personal representative or any interested person may petition for an order of complete settlement of the estate. The personal representative may petition at any time, and any other interested person may petition after 1 year from the appointment of the original personal representative, except that no petition under this section may be entertained until the time for presenting claims which arose prior to the death of the decedent has expired.

(2) The petition may request the court to determine testacy, if not previously determined, to consider the final account or compel or approve an accounting and distribution, to construe any will or determine heirs, and to adjudicate the final settlement and distribution of the estate.

(3) After notice to all interested persons and hearing, the court may enter an order or orders, on appropriate conditions, determining the persons entitled to distribution of the estate and, as circumstances require, approving settlement and directing or approving distribution of the estate and discharging the personal representative from further claim or demand of any interested person.

History: **En. 91A-3-1001 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-1001(1).**

72-3-1002. Order of complete settlement as to persons previously omitted or unnotified in previous formal testacy proceeding. If one or more heirs or devisees were omitted as parties in or were not given notice of a previous formal testacy proceeding, the court, on proper petition for an order of complete settlement of the estate under 72-3-1001 and after notice to the omitted or unnotified persons and other interested parties determined to be interested on the assumption that the previous order concerning testacy is conclusive as to those given notice of the earlier proceeding, may determine testacy as it affects the omitted persons and confirm or alter the previous order of testacy as it affects all interested persons as appropriate in the light of the new proofs. In the absence of objection by an omitted or unnotified person, evidence received in the original testacy proceeding shall constitute prima facie proof of due execution of any will previously admitted to probate or of the fact that the decedent left no valid will if the prior proceedings determined this fact.

History: **En. 91A-3-1001 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-1001(2).**

72-3-1003. Formal proceedings terminating administration under informally probated will — settlement order construing will without adjudicating testacy. (1) A personal representative administering an estate under an informally probated will or any devisee under an informally probated will may petition for an order of settlement of the estate which will not adjudicate the testacy status of the decedent. The personal representative may petition at any time and a devisee may petition after 1 year from the appointment of the original personal representative, except that no petition under this section may be entertained until the time for presenting claims which arose prior to the death of the decedent has expired.

(2) The petition may request the court to consider the final account or compel or approve an accounting and distribution, to construe the will, and adjudicate final settlement and distribution of the estate. After notice to all devisees and the personal representative and hearing, the court may enter an order or orders, on appropriate conditions, determining the persons entitled

to distribution of the estate under the will and, as circumstances require, approving settlement and directing or approving distribution of the estate and discharging the personal representative from further claim or demand of any devisee who is a party to the proceeding and those he represents. If it appears that a part of the estate is intestate, the proceedings shall be dismissed or amendments made to meet the provisions of 72-3-1001 and 72-3-1002.

History: **En. 91A-3-1002 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-1002.**

72-3-1004. Closing estate by sworn statement of personal representative. (1) Unless prohibited by order of the court and except for estates being administered in supervised administration proceedings, a personal representative may close an estate by filing with the court, no earlier than 6 months after the date of original appointment of a general personal representative for the estate, a verified statement stating that he or a prior personal representative whom he has succeeded has:

(a) published notice to creditors as provided by 72-3-801 and that the first publication occurred more than 6 months prior to the date of the statement;

(b) fully administered the estate of the decedent by making payment, settlement, or other disposition of all claims which were presented, expenses of administration, and estate, inheritance, and other death taxes, except as specified in the statement, and that the assets of the estate have been distributed to the persons entitled; if any claims remain undischarged, the statement shall state whether the personal representative has distributed the estate subject to possible liability with the agreement of the distributees, or it shall state in detail other arrangements which have been made to accommodate outstanding liabilities;

(c) sent a copy thereof to all distributees of the estate and to all creditors or other claimants of whom he is aware whose claims are neither paid nor barred and has furnished a full account in writing of his administration to the distributees whose interests are affected thereby; and

(d) complied with the provisions of 72-3-1006.

(2) If no proceedings involving the personal representative are pending in the court 1 year after the closing statement is filed, the appointment of the personal representative terminates.

History: **En. 91A-3-1003 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-1003.**

72-3-1005. Final accounting required to close estate. (1) Before an estate may be finally closed and the personal representative relieved of his duties and obligations, he shall either file with the court or deliver to all interested persons an accounting under oath showing the amount of money received and expended by him, the amount of all claims presented against the estate, and the names of the claimants and all other matters necessary to show the state of its affairs.

(2) Any interested person at any time during the course of the administration of an estate may for good cause shown require further accountings.

(3) If the personal representative is the sole residual beneficiary of the estate, no accounting need be made.

History: En. 91A-3-1012 by Sec. 5, Ch. 516, L. 1975; R.C.M. 1947, 91A-3-1012; amd. Sec. 10, Ch. 52, L. 1981.

Compiler's Comments

1981 Amendment: Inserted "residual" before "beneficiary" in (3).

72-3-1006. Certificate or receipt showing taxes paid required to close estate. (1) In all probate proceedings under this code, before final distribution to successors is made and before any petition is granted under 72-3-1001, 72-3-1002, 72-3-1003, or 72-3-1004, there shall have been filed with the clerk:

(a) a certificate from the department of revenue stating that any inheritance tax due on the assets of the estate has been paid; or

(b) an agreement with the department of revenue for extension of time for payment of inheritance taxes; or

(c) a receipt from the county treasurer stating that any inheritance tax due on the assets of the estate has been paid.

(2) This section shall not prohibit such partial distribution as may become necessary in the course of administration.

History: En. 91A-3-1004 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 1, Ch. 99, L. 1975; R.C.M. 1947, 91A-3-1004; amd. Sec. 11, Ch. 52, L. 1981.

Compiler's Comments

1981 Amendment: Added the "stating that" language in (1)(a) and new subsection (b).

72-3-1007 through 72-3-1010 reserved.

72-3-1011. Limitation on actions against personal representative. Unless previously barred by adjudication and except as provided in the closing statement, the rights of successors and of creditors whose claims have not otherwise been barred against the personal representative for breach of fiduciary duty are barred unless a proceeding to assert the same is commenced within 6 months after the filing of the closing statement. The rights thus barred do not include rights to recover from a personal representative for fraud, misrepresentation, or inadequate disclosure related to the settlement of the decedent's estate.

History: En. 91A-3-1006 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-1006.

72-3-1012. Liability of distributees to claimants. (1) After assets of an estate have been distributed and subject to 72-3-1013, an undischarged claim not barred may be prosecuted in a proceeding against one or more distributees. No distributee shall be liable to claimants for amounts in excess of the value of his distribution as of the time of distribution.

(2) As between distributees, each shall bear the cost of satisfaction of unbarred claims as if the claim had been satisfied in the course of administration. Any distributee who shall have failed to notify other distributees of the demand made upon him by the claimant in sufficient time to permit them to join in any proceeding in which the claim was asserted against him loses his right of contribution against other distributees.

History: En. 91A-3-1005 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-1005.

72-3-1013. Limitation on actions against distributees. (1) Unless previously adjudicated in a formal testacy proceeding or in a proceeding settling the accounts of a personal representative or otherwise barred, the claim of any claimant to recover from a distributee who is liable to pay the claim and the right of any heir or devisee or of a successor personal representative acting in their behalf to recover property improperly distributed or the value thereof from any distributee is forever barred at the later of 3 years after the decedent's death or 1 year after the time of distribution thereof.

(2) This section does not bar an action to recover property or value received as the result of fraud.

History: **En. 91A-3-1007 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-1007.**

72-3-1014. Certificate discharging liens securing fiduciary performance. After his appointment has terminated, the personal representative, his sureties, or any successor of either, upon the filing of a verified application showing so far as is known by the applicant that no action concerning the estate is pending in any court, is entitled to receive a certificate from the clerk that the personal representative appears to have fully administered the estate in question. The certificate evidences discharge of any lien on any property given to secure the obligation of the personal representative in lieu of bond or any surety but does not preclude action against the personal representative or the surety.

History: **En. 91A-3-1008 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-1008.**

72-3-1015. Estate to be closed within two years. (1) If an estate has not been closed within 2 years from the date of appointment of the personal representative, the supreme court administrator shall notify the district judge thereof. The judge shall order the personal representative and his attorney to appear before the court and show cause why the estate has not been closed.

(2) If, after the show cause hearing, the judge determines that good cause does not exist for failure to close the estate, the judge may make an order directing that the estate be closed within 30 days and that the personal representative and his attorney receive no fee or other compensation from the estate.

History: **En. 91A-3-1011 by Sec. 1, Ch. 191, L. 1975; R.C.M. 1947, 91A-3-1011; amd. Sec. 5, Ch. 104, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted "supreme court administrator" for "clerk of the district court" in the first sentence of (1).

72-3-1016. Subsequent administration upon discovery of other property. If other property of the estate is discovered after an estate has been settled and the personal representative discharged or after 1 year after a closing statement has been filed, the court upon petition of any interested person and upon notice as it directs may appoint the same or a successor personal representative to administer the subsequently discovered estate. If a new appointment is made, unless the court orders otherwise, the provisions of this code apply as appropriate; but no claim previously barred may be asserted in the subsequent administration.

History: En. 91A-3-1009 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-1009.

Part 11

Small Estates — Summary Procedures

72-3-1101. Collection of property by affidavit. (1) Thirty days after the death of a decedent, any person indebted to the decedent or having possession of tangible personal property or an instrument evidencing a debt, obligation, stock, or chose in action belonging to the decedent shall make payment of the indebtedness or deliver the tangible personal property or an instrument evidencing a debt, obligation, stock, or chose in action to a person claiming to be the successor of the decedent upon being presented an affidavit made by or on behalf of the successor stating that:

(a) the value of the entire estate, wherever located, less liens and encumbrances, does not exceed $7,500;

(b) 30 days have elapsed since the death of the decedent;

(c) no application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction; and

(d) the claiming successor is entitled to payment or delivery of the property.

(2) A transfer agent of any security shall change the registered ownership on the books of a corporation from the decedent to the successor or successors upon the presentation of an affidavit as provided in subsection (1).

History: En. 91A-3-1201 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-1201; amd. Sec. 1, Ch. 124, L. 1981.

Compiler's Comments

1981 Amendment: Increased the value of estate in (1)(a) from $1,500 to $7,500.

Applicability; Section 4, Ch. 124, L. 1981, provided: "This act applies to decedents dying after the effective date of this act." Effective October 1, 1981.

72-3-1102. Effect of payment pursuant to affidavit — remedy for failure to pay. (1) The person paying, delivering, transferring, or issuing personal property or the evidence thereof pursuant to affidavit is discharged and released to the same extent as if he dealt with a personal representative of the decedent. He is not required to see to the application of the personal property or evidence thereof or to inquire into the truth of any statement in the affidavit.

(2) If any person to whom an affidavit is delivered refuses to pay, deliver, transfer, or issue any personal property or evidence thereof, it may be recovered or its payment, delivery, transfer, or issuance compelled upon proof of their right in a proceeding brought for the purpose by or on behalf of the persons entitled thereto.

(3) Any person to whom payment, delivery, transfer, or issuance is made is answerable and accountable therefor to any person representative of the estate or to any other person having a superior right.

History: En. 91A-3-1202 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-1202.

72-3-1103. Summary procedure for disbursement and distribution. If it appears from the inventory and appraisal that the value of the net distributable estate does not exceed $7,500 or the value of the entire estate, less liens and encumbrances, does not exceed homestead allowance, exempt property, family allowance, costs and expenses of administration, reasonable funeral expenses, and reasonable and necessary medical and hospital expenses of the last illness of the decedent, the personal representative, without giving notice to creditors, may immediately disburse and distribute the estate to the persons entitled thereto and file a closing statement as provided in 72-3-1104.

History: En. 91A-3-1203 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-1203; amd. Sec. 2, Ch. 124, L. 1981.

Compiler's Comments

1981 Amendment: Increased the value of net distributable estate from $1,500 to $7,500.

Applicability: Section 4, Ch. 124, L. 1981, provided: "This act applies to decedents dying after the effective date of this act." Effective October 1, 1981.

72-3-1104. Closing by sworn statement of personal representative — termination of appointment. (1) Unless prohibited by order of the court and except for estates being administered by supervised personal representatives, a personal representative may close an estate administered under the summary procedures of 72-3-1103 by filing with the court, at any time after disbursement and distribution of the estate, a verified statement stating that:

(a) to the best knowledge of the personal representative, the value of the net distributable estate did not exceed $7,500 or the value of the entire estate, less liens and encumbrances, did not exceed homestead allowance, exempt property, family allowance, costs and expenses of administration, reasonable funeral expenses, and reasonable, necessary medical and hospital expenses of the last illness of the decedent;

(b) the personal representative has fully administered the estate by payment of inheritance taxes and by disbursing and distributing it to the persons entitled thereto; and

(c) the personal representative has sent a copy of the closing statement to all distributees of the estate and to all creditors or other claimants of whom he is aware whose claims are neither paid nor barred and has furnished a full account in writing of his administration to the distributees whose interests are affected.

(2) If no actions or proceedings involving the personal representative are pending in the court 1 year after the closing statement is filed, the appointment of the personal representative terminates.

(3) A closing statement filed under this section has the same effect as one filed under 72-3-1004.

History: En. 91A-3-1204 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-1204; amd. Sec. 3, Ch. 124, L. 1981.

Compiler's Comments

1981 Amendment: Increased the value of net distributable estate in (1)(a) from $1,500 to $7,500.

Applicability: Section 4, Ch. 124, L. 1981, provided: "This act applies to decedents dying after the effective date of this act." Effective October 1, 1981.

CHAPTER 4

UPC — FOREIGN PERSONAL REPRESENTATIVES AND ANCILLARY ADMINISTRATION

Part 1 — General Provisions

Section

72-4-101. Definitions.

Part 2 — Jurisdiction Over Foreign Personal Representatives

72-4-201. Jurisdiction by act of foreign personal representative.
72-4-202. Jurisdiction by act of decedent.
72-4-203. Service on foreign personal representative.

Part 3 — Powers and Duties of Foreign Personal Representative

72-4-301. Renumbered 72-4-310. Sec. 17, Ch. 52, L. 1981.
72-4-302. Renumbered 72-4-311. Sec. 17, Ch. 52, L. 1981.
72-4-303. Filing of letters, bond, inventory, and affidavit — copy to department of revenue.
72-4-304. Determination of inheritance tax — certificate of department of revenue showing tax paid, waived, or bond posted.
72-4-305. Right to inspect estate assets for inventory.
72-4-306. Payment of debt and delivery of property to foreign representative.
72-4-307. Payment or delivery discharges debtor or possessor.
72-4-308. Payment or delivery to foreign representative prohibited by resident creditor notice.
72-4-309. Proof of authority — bond.
72-4-310. Powers of foreign representative generally.
72-4-311. Effect of local administration on foreign representative, third persons, and local representative.

Part 4 — Ancillary Administration

72-4-401. Ancillary administration — provisions governing.
72-4-402. Adjudication in other jurisdiction binding on local representative.

Part 1

General Provisions

72-4-101. Definitions. In this chapter, the following definitions apply:

(1) "Local administration" means administration by a personal representative appointed in this state pursuant to appointment proceedings described in chapter 3.

(2) "Local personal representative" includes any personal representative appointed in this state pursuant to appointment proceedings described in chapter 3 and excludes foreign personal representatives who acquire the power of a local personal representative pursuant to 72-4-301.

(3) "Resident creditor" means a person domiciled in or doing business in this state who is or could be a claimant against an estate of a nonresident decedent.

History: En. 91A-4-101 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-4-101.

Part 2

Jurisdiction Over Foreign Personal Representatives

72-4-201. Jurisdiction by act of foreign personal representative. (1) A foreign personal representative submits personally to the jurisdiction of the courts of this state in any proceeding relating to the estate by:

(a) filing authenticated copies of his appointment as provided in 72-4-309;

(b) receiving payment of money or taking delivery of personal property under 72-4-306; or

(c) doing any act as a personal representative in this state that would have given the state jurisdiction over him as an individual.

(2) Jurisdiction under subsection (1)(b) is limited to the money or value of personal property collected.

History: En. 91A-4-301 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-4-301; amd. Sec. 12, Ch. 52, L. 1981.

Compiler's Comments

1981 Amendment: Added subsections (1)(a) and (b) and rearranged other language in (1); substituted "under subsection (1)(b)" for "which arises solely from receiving payment of money or taking delivery of personal property" in (2).

72-4-202. Jurisdiction by act of decedent. In addition to jurisdiction conferred by 72-4-201, a foreign personal representative is subject to the jurisdiction of the courts of this state to the same extent that his decedent was subject to jurisdiction immediately prior to death.

History: En. 91A-4-302 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-4-302.

72-4-203. Service on foreign personal representative. (1) Service of process may be made upon the foreign personal representative by registered or certified mail addressed to his last reasonably ascertainable address requesting a return receipt signed by addressee only. Notice by ordinary first-class mail is sufficient if registered or certified mail service to the addressee is unavailable. Service may be made upon a foreign personal representative in the manner in which service could have been made under other laws of this state on either the foreign personal representative or his decedent immediately prior to death.

(2) If service is made upon a foreign personal representative as provided in subsection (1), he shall be allowed at least 30 days within which to appear or respond.

History: En. 91A-4-303 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-4-303.

Part 3

Powers and Duties of Foreign Personal Representative

72-4-301. Renumbered 72-4-310. Sec. 17, Ch. 52, L. 1981.

72-4-302. Renumbered 72-4-311. Sec. 17, Ch. 52, L. 1981.

72-4-303. Filing of letters, bond, inventory, and affidavit — copy to department of revenue. (1) The domiciliary foreign personal representative of the estate of a nonresident decedent, who wishes to receive payment and delivery as described in 72-4-306 or to exercise the powers over assets described in 72-4-301, shall file in duplicate with a district court in this state in a county in which property belonging to the decedent is located authenticated copies of his appointment and of any official bond he has given, an inventory and appraisal of the property of the nonresident decedent located in this state, which inventory shall contain the information prescribed in 72-3-607, and an affidavit stating:

(a) the date of death of the nonresident decedent; and

(b) that no local administration or application or petition therefor is pending in this state.

(2) Upon receiving the information required by subsection (1), the clerk of court shall issue a certificate to the domiciliary foreign personal representative identifying him as having registered with the district court and stating the name and date of death of the decedent.

(3) The clerk shall also immediately forward a copy of the appointment, affidavit, and inventory and appraisal required by subsection (1) to the department of revenue.

History: **En. 91A-4-201 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-4-201.**

72-4-304. Determination of inheritance tax — certificate of department of revenue showing tax paid, waived, or bond posted. (1) The department of revenue shall determine what inheritance tax, if any, is owing on the property of the nonresident decedent located in this state and shall send notice of the tax owing to the domiciliary foreign personal representative and to the clerk of court.

(2) Upon payment of the inheritance tax due or if no tax is owing, the department of revenue shall issue a certificate to the domiciliary foreign personal representative indicating that inheritance taxes either are not owing or have been paid and shall send a copy of the certificate to the clerk of court.

(3) The department may issue an order waiving inheritance taxes on a particular item of property under such terms and circumstances as the department shall determine.

(4) Upon the posting by the domiciliary foreign personal representative of satisfactory bond, the department may issue a certificate indicating that bond has been posted sufficient to secure any inheritance tax due on the in-state property of the nonresident decedent. This certificate may be issued at any time after the filing of the inventory with the clerk of court.

History: **En. 91A-4-202 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-4-202.**

72-4-305. Right to inspect estate assets for inventory. Any person holding any property of a nonresident decedent, including any instrument evidencing a debt, obligation, stock, or chose in action, shall permit the domiciliary foreign personal representative of the nonresident decedent to inspect and appraise the property for purposes of completing the inventory and appraisal called for in 72-4-303(1) upon being presented with proof of his appointment and an affidavit made by or on behalf of the representative stating:

(1) the date of death of the nonresident decedent;

(2) that no local administration or application or petition therefor is pending in this state; and

(3) that the domiciliary foreign personal representative is entitled to make such inspection and appraisal.

History: **En. 91A-4-203 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-4-203.**

72-4-306. Payment of debt and delivery of property to foreign representative. At any time after the expiration of 60 days from the death of a nonresident decedent, any person indebted to the estate of the nonresident decedent or having possession or control of personal property or of an instrument evidencing a debt, obligation, stock, or chose in action belonging to the estate of the nonresident decedent may pay the debt, deliver the personal property, or the instrument evidencing the debt, obligation, stock, or chose in action to the domiciliary foreign personal representative of the nonresident decedent upon being presented with proof of his appointment and an affidavit made by or on behalf of the representative, stating:

(1) the date of the death of the nonresident decedent;

(2) that no local administration, or application or petition therefor, is pending in this state;

(3) that the domiciliary foreign personal representative is entitled to payment or delivery.

History: **En. 91A-4-204 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-4-204; amd. Sec. 14, Ch. 52, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted the last phrase in the first paragraph and (1), (2), and (3) for "a certificate from the clerk of the court for the county where the domiciliary foreign personal representative has filed his affidavit, as described in 72-4-303, and a certificate from the department of revenue, as described in 72-4-304".

72-4-307. Payment or delivery discharges debtor or possessor. Payment or delivery made in good faith on the basis of the certificate of the clerk of court and the certificate of the department of revenue releases the debtor or person having possession of the personal property to the same extent as if payment or delivery had been made to a local personal representative.

History: **En. 91A-4-205 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-4-205.**

72-4-308. Payment or delivery to foreign representative prohibited by resident creditor notice. Payment or delivery under 72-4-306 may not be made if a resident creditor of the nonresident decedent has notified the debtor of the nonresident decedent or the person having possession of the personal property belonging to the nonresident decedent that the debt should not be paid or the property delivered to the domiciliary foreign personal representative.

History: **En. 91A-4-206 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-4-206; amd. Sec. 15, Ch. 52, L. 1981.**

Compiler's Comments

1981 Amendment: Deleted subsection (2) that read: "(2) In cases under subsection (1), the foreign personal representative must seek an order of the court in which he has filed his affidavit to obtain payment or delivery unless the notification by the resident creditor is withdrawn."

72-4-309. Proof of authority — bond. If no local administration or application or petition therefor is pending in this state, a domiciliary foreign personal representative may file with a court in this state in a county in which property belonging to the decedent is located, authenticated copies of his appointment and of any official bond he has given.

History: **En. Sec. 16, Ch. 52, L. 1981.**

Compiler's Comments

Codification Instruction: Section 17, Ch. 52, L. 1981, read: "(1) Sections 4 [72-2-210] and 16 [72-4-309] are intended to be codified as an integral part of Title 72, chapters 1 through 5 and chapter 16, part 6. The provisions of Title 72, chapters 1 through 5 and chapter 16, part 6, apply to sections 4 and 16.

(2) The code commissioner is instructed to codify section 16 and to renumber Title 72, chapter 4, part 3, in such a way that the sections of Title 72, chapter 4, part 3, are in the same numerical order as the corresponding sections of the Uniform Probate Code, 1977 edition, as promulgated by the national conference of commissioners on uniform state laws."

72-4-310. Powers of foreign representative generally. A domiciliary foreign personal representative who has complied with 72-4-309 may exercise as to assets in this state all powers of a local personal representative and may maintain actions and proceedings in this state, subject to any conditions imposed upon nonresident parties generally.

History: **En. 91A-4-207 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-4-207; amd. Sec. 13, Ch. 52, L. 1981; MCA 1979, 72-4-301; redes. 72-4-310 by Sec. 17, Ch. 52, L. 1981.**

Compiler's Comments

1981 Amendment: Deleted "Except as limited by 72-4-308" and substituted "72-4-309" for "72-4-303 and 72-4-304"; deleted former subsection (2) that read: "(2) A domiciliary foreign personal representative who has complied with all the requirements of 72-4-303(1) except for the filing of an inventory and appraisal may, when necessary to protect the estate of the decedent and upon appointment by the clerk of court, exercise the powers of a special administrator described in chapter 3, part 7."

Renumber Instruction: Subsection (2), sec. 17, Ch. 52, L. 1981, read: "(2) The code commissioner is instructed to codify section 16 and to renumber Title 72, chapter 4, part 3, in such a way that the sections of Title 72, chapter 4, part 3, are in the same numerical order as the corresponding sections of the Uniform Probate Code, 1977 edition, as promulgated by the national conference of commissioners on uniform state laws."

72-4-311. Effect of local administration on foreign representative, third persons, and local representative. (1) The power of a domiciliary foreign personal representative under 72-4-301 or 72-4-306 shall be exercised only if there is no administration or application therefor pending in this state. An application or petition for local administration of the estate terminates the power of the foreign personal representative to act under 72-4-301, but the local court may allow the foreign personal representative to exercise limited powers to preserve the estate.

(2) No person who, before receiving actual notice of a pending local administration, has changed his position in reliance upon the powers of a foreign personal representative shall be prejudiced by reason of the application or petition for or grant of local administration. The local personal representative is subject to all duties and obligations which have accrued by virtue of the exercise of the powers by the foreign personal representative and may be substituted for him in any action or proceedings in this state.

History: **En. 91A-4-208 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-4-208; MCA 1979, 72-4-302; redes. 72-4-311 by Sec. 17, Ch. 52, L. 1981.**

Compiler's Comments

Renumber Instruction: Subsection (2), sec. 17, Ch. 52, L. 1981, read: "(2) The code commissioner is instructed to codify section 16 and to renumber Title 72, chapter 4, part 3, in such a way that the sections of Title 72, chapter 4, part

3, are in the same numerical order as the corresponding sections of the Uniform Probate Code, 1977 edition, as promulgated by the national conference of commissioners on uniform state laws."

Part 4

Ancillary Administration

72-4-401. Ancillary administration — provisions governing. In respect to a nonresident decedent, the provisions of this code govern:

(1) proceedings, if any, in a court of this state for probate of the will, appointment, removal, supervision, and discharge of the local personal representative and any other order concerning the estate; and

(2) the status, powers, duties, and liabilities of any local personal representative and the rights of claimants, purchasers, distributees, and others in regard to a local administration.

History: **En. 91A-4-209 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-4-209.**

72-4-402. Adjudication in other jurisdiction binding on local representative. An adjudication rendered in any jurisdiction in favor of or against any personal representative of the estate is as binding on the local personal representative as if he were a party to the adjudication.

History: **En. 91A-4-401 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-4-401.**

CHAPTER 5

UPC — PERSONS UNDER DISABILITY GUARDIANSHIP AND CONSERVATORSHIP

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72-5-101. Definitions.
72-5-102. Jurisdiction of subject matter — consolidation of proceedings.
72-5-103. Delegation of powers by parent or guardian.
72-5-104. Informal discharge of duty to pay or deliver property to minor.

Part 2 — Guardians of Minors

72-5-201. Status of guardian of minor — how acquired generally — letters to indicate means of appointment.
72-5-202. Consent to jurisdiction by acceptance of appointment.
Sections 72-5-203 through 72-5-210 reserved.
72-5-211. Testamentary appointment of guardian of minor — when effective — priorities — notice of appointment.
72-5-212. Recognition of appointment of guardian by foreign will.
72-5-213. Objection by minor fourteen or older to testamentary appointment.
Sections 72-5-214 through 72-5-220 reserved.
72-5-221. Venue for proceedings for court appointment of guardian of minor.
72-5-222. Court appointment of guardian of minor — when allowed — priority of testamentary appointment.
72-5-223. Guardian of minor by court appointment — qualifications — nominee of minor preferred.
72-5-224. Temporary guardian of minor.

72-5-225. Procedure for court appointment of guardian of minor — notice — hearing — representation by attorney.
Sections 72-5-226 through 72-5-230 reserved.
72-5-231. Powers and duties of guardian of minor.
72-5-232. Proceedings subsequent to appointment — concurrent jurisdiction of court where ward resides — venue.
72-5-233. Termination of appointment — how effected — certain liabilities and obligations not affected.
72-5-234. Procedure for resignation or removal — petition, notice, and hearing — representation by attorney.

Part 3 — Guardians of Incapacitated Persons

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Part 1

General Provisions

72-5-101. Definitions. Unless otherwise apparent from the context, in this code the following definitions apply:

(1) "Incapacitated person" means any person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication, or other cause (except minority) to the extent that he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person or which cause has so impaired the person's judgment that he is incapable of realizing and making a rational decision with respect to his need for treatment.

(2) "Protective proceeding" means a proceeding under the provisions of 72-5-409 to determine that a person cannot effectively manage or apply his estate to necessary ends, either because he lacks the ability or is otherwise inconvenienced or because he is a minor, and to secure administration of his estate by a conservator or other appropriate relief.

(3) "Protected person" means a minor or other person for whom a conservator has been appointed or other protective order has been made.

(4) "Ward" means a person for whom a guardian has been appointed. A "minor ward" is a minor for whom a guardian has been appointed solely because of minority.

History: En. 91A-5-101 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 1, Ch. 514, L. 1977; R.C.M. 1947, 91A-5-101.

72-5-102. Jurisdiction of subject matter — consolidation of proceedings. (1) The court has jurisdiction over protective proceedings and guardianship proceedings.

(2) When both guardianship and protective proceedings as to the same person are commenced or pending in the same court, the proceedings may be consolidated.

History: **En. 91A-5-102 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-102.**

72-5-103. Delegation of powers by parent or guardian. A parent or a guardian of a minor or incapacitated person, by a properly executed power of attorney, may delegate to another person, for a period not exceeding 6 months, any of his powers regarding care, custody, or property of the minor child or ward, except his power to consent to marriage or adoption of a minor ward.

History: **En. 91A-5-104 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-104.**

72-5-104. Informal discharge of duty to pay or deliver property to minor. (1) Any person under a duty to pay or deliver money or personal property to a minor may perform this duty, in amounts not exceeding $5,000 per annum, by paying or delivering the money or property to:

(a) the minor, if he has attained the age of 18 years or is married;

(b) any person having the care and custody of the minor with whom the minor resides;

(c) a guardian of the minor; or

(d) a financial institution incident to a deposit in a federally insured savings account in the sole name of the minor and giving notice of the deposit to the minor.

(2) This section does not apply if the person making payment or delivery has actual knowledge that a conservator has been appointed or proceedings for appointment of a conservator of the estate of the minor are pending.

(3) The persons, other than the minor or any financial institution under (1)(d) above, receiving money or property for a minor are obligated to apply the money to the support and education of the minor but may not pay themselves except by way of reimbursement for out-of-pocket expenses for goods and services necessary for the minor's support. Any excess sums shall be preserved for future support of the minor, and any balance not so used and any property received for the minor must be turned over to the minor when he attains majority. Persons who pay or deliver in accordance with provisions of this section are not responsible for the proper application thereof.

History: **En. 91A-5-103 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-103.**

Part 2

Guardians of Minors

72-5-201. Status of guardian of minor — how acquired generally — letters to indicate means of appointment. (1) A person becomes a guardian of a minor by acceptance of a testamentary appointment or upon appointment by the court.

(2) Letters of guardianship must indicate whether the guardian was appointed by will or by court order.

(3) The guardianship status continues until terminated, without regard to the location from time to time of the guardian and minor ward.

History: En. 91A-5-201, 91A-5-208 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-201, 91A-5-208(part).

72-5-202. Consent to jurisdiction by acceptance of appointment. (1) By accepting a testamentary or court appointment as guardian, a guardian submits personally to the jurisdiction of the court in any proceeding relating to the guardianship that may be instituted by any interested person.

(2) Notice of any proceeding shall be delivered to the guardian or mailed to him by ordinary mail at his address as listed in the court records and to his address as then known to the petitioner.

History: En. 91A-5-208 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-208(part).

72-5-203 through 72-5-210 reserved.

72-5-211. Testamentary appointment of guardian of minor — when effective — priorities — notice of appointment. (1) The parent of a minor may appoint by will a guardian of an unmarried minor. Subject to the right of the minor under 72-5-213, a testamentary appointment becomes effective upon filing the guardian's acceptance in the court in which the will is probated if before acceptance both parents are dead or the surviving parent is adjudged incapacitated. If both parents are dead, an effective appointment by the parent who died later has priority.

(2) Upon acceptance of appointment, written notice of acceptance must be given by the guardian to the minor and to the person having his care or to his nearest adult relations.

History: En. 91A-5-202 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-202(part).

72-5-212. Recognition of appointment of guardian by foreign will. This state recognizes a testamentary appointment effected by filing the guardian's acceptance under a will probated in another state which is the testator's domicile.

History: En. 91A-5-202 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-202(part).

72-5-213. Objection by minor fourteen or older to testamentary appointment. A minor of 14 or more years may prevent an appointment of his testamentary guardian from becoming effective or may cause a previously accepted appointment to terminate by filing with the court in which the will is probated a written objection to the appointment before it is accepted or within 30 days after notice of its acceptance. An objection may be withdrawn. An objection does not preclude appointment by the court in a proper proceeding of the testamentary nominee or any other suitable person.

History: En. 91A-5-203 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-203.

72-5-214 through 72-5-220 reserved.

72-5-221. Venue for proceedings for court appointment of guardian of minor. The venue for guardianship proceedings for a minor is in the place where the minor resides or is present.

History: En. 91A-5-205 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-205.

72-5-222. Court appointment of guardian of minor — when allowed — priority of testamentary appointment. (1) The court may appoint a guardian for an unmarried minor if all parental rights of custody have been terminated or suspended by circumstances or prior court order.

(2) A guardian appointed by will as provided in 72-5-211 and 72-5-212 whose appointment has not been prevented or nullified under 72-5-213 has priority over any guardian who may be appointed by the court, but the court may proceed with an appointment upon a finding that the testamentary guardian has failed to accept the testamentary appointment within 30 days after notice of the guardianship proceeding.

History: En. 91A-5-204 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-204.

72-5-223. Guardian of minor by court appointment — qualifications — nominee of minor preferred. The court may appoint as guardian any person whose appointment would be in the best interests of the minor. The court shall appoint a person nominated by the minor if the minor is 14 years of age or older unless the court finds the appointment contrary to the best interests of the minor.

History: En. 91A-5-206 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-206.

72-5-224. Temporary guardian of minor. If necessary, the court may appoint a temporary guardian with the status of an ordinary guardian of a minor, but the authority of a temporary guardian shall not last longer than 6 months.

History: En. 91A-5-207 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-207(3).

72-5-225. Procedure for court appointment of guardian of minor — notice — hearing — representation by attorney. (1) Notice of the time and place of hearing of a petition for the appointment of a guardian of a minor is to be given by the petitioner in the manner prescribed by 72-1-301 to:

(a) the minor, if he is 14 or more years of age;

(b) the person who has had the principal care and custody of the minor during the 60 days preceding the date of the petition; and

(c) any living parent of the minor.

(2) Upon hearing, if the court finds that a qualified person seeks appointment, venue is proper, the required notices have been given, the requirements of 72-5-222 have been met, and the welfare and best interests of the minor will be served by the requested appointment, it shall make the appointment. In other cases the court may dismiss the proceedings or make any other disposition of the matter that will best serve the interest of the minor.

(3) If, at any time in the proceeding, the court determines that the interests of the minor are or may be inadequately represented, it may appoint an attorney to represent the minor, giving consideration to the preference of the

minor if the minor is 14 years of age or older. The county attorney and the deputy county attorneys, if any, may not be appointed for this purpose.

History: En. 91A-5-207 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-207(1), (2), (4); amd. Sec. 2, Ch. 93, L. 1979.

72-5-226 through 72-5-230 reserved.

72-5-231. Powers and duties of guardian of minor. A guardian of a minor has the powers and responsibilities of a parent who has not been deprived of custody of his minor and unemancipated child, except that a guardian is not legally obligated to provide from his own funds for the ward and is not liable to third persons by reason of the parental relationship for acts of the ward. In particular and without qualifying the foregoing, a guardian has the following powers and duties:

(1) He must take reasonable care of his ward's personal effects and commence protective proceedings if necessary to protect other property of the ward.

(2) He may receive money payable for the support of the ward to the ward's parent, guardian, or custodian under the terms of any statutory benefit or insurance system or any private contract, devise, trust, conservatorship, or custodianship. He also may receive money or property of the ward paid or delivered by virtue of 72-5-104. Any sums so received shall be applied to the ward's current needs for support, care, and education. He must exercise due care to conserve any excess for the ward's future needs unless a conservator has been appointed for the estate of the ward, in which case excess shall be paid over at least annually to the conservator. Sums so received by the guardian are not to be used for compensation for his services except as approved by order of court or as determined by a duly appointed conservator other than the guardian. A guardian may institute proceedings to compel the performance by any person of a duty to support the ward or to pay sums for the welfare of the ward.

(3) The guardian is empowered to facilitate the ward's education, social, or other activities and to authorize medical or other professional care, treatment, or advice. A guardian is not liable by reason of this consent for injury to the ward resulting from the negligence or acts of third persons unless it would have been illegal for a parent to have consented. A guardian may consent to the marriage or adoption of his ward.

(4) A guardian must report the condition of his ward and of the ward's estate which has been subject to his possession or control, as ordered by court on petition of any person interested in the minor's welfare or as required by court rule.

History: En. 91A-5-209 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-209.

72-5-232. Proceedings subsequent to appointment — concurrent jurisdiction of court where ward resides — venue. (1) The court where the ward resides has concurrent jurisdiction with the court which appointed the guardian or in which acceptance of a testamentary appointment was filed over resignation, removal, accounting, and other proceedings relating to the guardianship.

(2) If the court located where the ward resides is not the court in which acceptance of appointment is filed, the court in which proceedings subsequent to appointment are commenced shall in all appropriate cases notify the other court in this or another state and after consultation with that court determine whether to retain jurisdiction or transfer the proceedings to the other court, whichever is in the best interest of the ward. A copy of any order accepting a resignation or removing a guardian shall be sent to the court in which acceptance of appointment is filed.

History: En. 91A-5-211 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-211.

72-5-233. Termination of appointment — how effected — certain liabilities and obligations not affected. A guardian's authority and responsibility terminates upon the death, resignation, or removal of the guardian or upon the minor's death, adoption, marriage, or attainment of majority, but termination does not affect his liability for prior acts or his obligation to account for funds and assets of his ward. Resignation of a guardian does not terminate the guardianship until it has been approved by the court. A testamentary appointment under an informally probated will terminates if the will is later denied probate in a formal proceeding.

History: En. 91A-5-210 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-210.

72-5-234. Procedure for resignation or removal — petition, notice, and hearing — representation by attorney. (1) Any person interested in the welfare of a ward or the ward, if 14 or more years of age, may petition for removal of a guardian on the ground that removal would be in the best interest of the ward. A guardian may petition for permission to resign. A petition for removal or for permission to resign may but need not include a request for appointment of a successor guardian.

(2) After notice and hearing on a petition for removal or for permission to resign, the court may terminate the guardianship and make any further order that may be appropriate.

(3) If at any time in the proceeding the court determines that the interests of the ward are or may be inadequately represented, it may appoint an attorney to represent the minor, giving consideration to the preference of the minor if the minor is 14 or more years of age.

History: En. 91A-5-212 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-212.

Part 3

Guardians of Incapacitated Persons

72-5-301. Consent to jurisdiction by acceptance of appointment. (1) By accepting appointment, a guardian submits personally to the jurisdiction of the court in any proceeding relating to the guardianship that may be instituted by any interested person.

(2) Notice of any proceeding shall be delivered to the guardian or mailed to him by ordinary mail at his address as listed in the court records and to his address as then known to the petitioner.

History: En. 91A-5-305 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-305.

72-5-302. Testamentary appointment of guardian for incapacitated person — when effective — priorities. (1) The parent of an incapacitated person may by will appoint a guardian of the incapacitated person. A testamentary appointment by a parent becomes effective when, after having given 7 days' prior written notice of his intention to do so to the incapacitated person and to the person having his care or to his nearest adult relative, the guardian files acceptance of appointment in the court in which the will is informally or formally probated, if prior thereto both parents are dead or the surviving parent is adjudged incapacitated. If both parents are dead, an effective appointment by the parent who died later has priority unless it is terminated by the denial of probate in formal proceedings.

(2) The spouse of a married incapacitated person may by will appoint a guardian of the incapacitated person. The appointment becomes effective when, after having given 7 days' prior written notice of his intention to do so to the incapacitated person and to the person having his care or to his nearest adult relative, the guardian files acceptance of appointment in the court in which the will is informally or formally probated. An effective appointment by a spouse has priority over an appointment by a parent unless it is terminated by the denial of probate in formal proceedings.

History: En. 91A-5-301 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-301(1), (2).

72-5-303. Recognition of appointment of guardian by foreign will. This state shall recognize a testamentary appointment effected by filing acceptance under a will probated at the testator's domicile in another state.

History: En. 91A-5-301 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-301(3).

72-5-304. Objection by alleged incapacitated person to testamentary appointment. On the filing with the court in which the will was probated of written objection to the appointment by the person for whom a testamentary appointment of guardian has been made, the appointment is terminated. An objection does not prevent appointment by the court in a proper proceeding of the testamentary nominee or any other suitable person upon an adjudication of incapacity in proceedings under this part.

History: En. 91A-5-301 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-301(4).

72-5-305. Definitions. In this part, unless the context requires otherwise, the following definitions apply:

(1) "Full guardian" means a guardian who possesses all the legal duties and powers enumerated in 72-5-321.

(2) "Limited guardian" means a guardian who possesses fewer than all of the legal duties and powers of a full guardian and whose rights, powers, and duties have been specifically enumerated by the court.

(3) "Guardian" includes a full guardian and a limited guardian.

History: En. Sec. 1, Ch. 344, L. 1981.

Compiler's Comments

Codification Instruction: Section 12, Ch. 344, L. 1981, provided: "Sections 1, 2, 5, 6, and 7 [72-5-305, 72-5-306, 72-5-318 through 72-5-320] are intended to be codified as an integral part of Title 72, chapter 5, part 3, and the provisions of Title 72, chapter 5, part 3, apply to sections 1, 2, 5, 6, and 7."

72-5-306. Purpose and basis for guardianship. Guardianship for an incapacitated person may be used only as is necessary to promote and protect the well-being of the person. The guardianship must be designed to encourage the development of maximum self-reliance and independence in the person and may be ordered only to the extent that the person's actual mental and physical limitations require it. An incapacitated person for whom a guardian has been appointed is not presumed to be incompetent and retains all legal and civil rights except those that have been expressly limited by court order or have been specifically granted to the guardian by the court.

History: En. Sec. 2, Ch. 344, L. 1981.

Compiler's Comments

Codification Instruction: Section 12, Ch. 344, L. 1981, provided: "Sections 1, 2, 5, 6, and 7 [72-5-305, 72-5-306, 72-5-318 through 72-5-320] are intended to be codified as an integral part of Title 72, chapter 5, part 3, and the provisions of Title 72, chapter 5, part 3, apply to sections 1, 2, 5, 6, and 7."

72-5-307 through 72-5-310 reserved.

72-5-311. Venue for proceedings for court appointment of guardian. The venue for guardianship proceedings for an incapacitated person is in the place where the incapacitated person resides or is present. If the incapacitated person is admitted to an institution pursuant to order of a court of competent jurisdiction, venue is also in the county in which that court sits.

History: En. 91A-5-302 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-302.

72-5-312. Who may be guardian — priorities. (1) Any competent person or a suitable institution, association, or nonprofit corporation or any of its members may be appointed guardian of an incapacitated person.

(2) Persons who are not disqualified have priority for appointment as guardian in the following order:

(a) a person, association, or private nonprofit corporation nominated by the incapacitated person, if the court specifically finds that at the time of the nomination the incapacitated person had the capacity to make a reasonably intelligent choice;

(b) the spouse of the incapacitated person;

(c) an adult child of the incapacitated person;

(d) a parent of the incapacitated person, including a person nominated by will or other writing signed by a deceased parent;

(e) any relative of the incapacitated person with whom he has resided for more than 6 months prior to the filing of the petition;

(f) a relative or friend who has demonstrated a sincere, longstanding interest in the welfare of the incapacitated person;

(g) a private association or nonprofit corporation with a guardianship program for incapacitated persons, a member of such private association or nonprofit corporation approved by the association or corporation to act as a guardian for the incapacitated person, or a person included on an official list of such association or organization as willing and suitable to act as guardian of incapacitated persons;

(h) a person nominated by the person who is caring for him or paying benefits to him.

(3) The priorities established in subsection (2) are not binding, and the court shall select the person, association, or nonprofit corporation that is best qualified and willing to serve.

(4) Except as provided in subsection (5), the court may not appoint a person, institution, association, or nonprofit corporation to be the guardian of an incapacitated person if the person, institution, association, or nonprofit corporation:

(a) provides or is likely to provide during the guardianship substantial services to the incapacitated person in the professional or business capacity other than in the capacity of guardian;

(b) is or is likely to become during the guardianship period a creditor of the incapacitated person, other than in the capacity of guardian;

(c) has or is likely to have during the guardianship period interests that may conflict with those of the incapacitated person; or

(d) is employed by a person, institution, association, or nonprofit corporation who or which would be disqualified under subsections (4)(a) through (4)(c).

(5) If the court determines that there is no qualified person willing and able to serve as guardian, the court may appoint an agency of the state or federal government that is authorized or required by statute to provide services to the person or to persons suffering from the kind of disability from which the incapacitated person is suffering or a designee of the agency, notwithstanding the provisions of subsection (4). Whenever an agency is appointed guardian, the court may also appoint a limited guardian to represent a specified interest of the incapacitated person. Whenever a limited guardian is appointed pursuant to this subsection, the specified interest of the incapacitated person is the sole responsibility of the limited guardian and is removed from the responsibility of the agency.

History: **En. 91A-5-311 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-311; amd. Sec. 3, Ch. 344, L. 1981.**

Compiler's Comments

1981 Amendment: Inserted "association, or nonprofit corporation or any of its members" in (1); added subsections (2)(a), (2)(f), (2)(g), and (3) through (5).

72-5-313. Visitor in guardianship proceedings defined. A visitor is, with respect to guardianship proceedings, a person who is trained in law, nursing, social work, medical care, mental health care, pastoral care, education, or rehabilitation and is an officer, employee, or special appointee of the court with no personal interest in the proceedings.

History: **En. 91A-5-308 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-308; amd. Sec. 4, Ch. 344, L. 1981.**

Compiler's Comments

1981 Amendment: Inserted "medical care, mental health care, pastoral care, education, or rehabilitation" after "social work".

72-5-314. Notices in guardianship proceedings. (1) In a proceeding for the appointment or removal of a guardian of an incapacitated person other than the appointment of a temporary guardian or temporary suspension of a guardian, notice of hearing shall be given to each of the following:

(a) the ward or the person alleged to be incapacitated and his spouse, parents, and adult children;

(b) any person who is serving as his guardian, conservator, or who has his care and custody; and

(c) in case no other person is notified under (a), at least one of his closest adult relatives, if any can be found.

(2) Notice shall be served personally on the alleged incapacitated person and his spouse and parents if they can be found within the state. Notice to the spouse and parents, if they cannot be found within the state, and to all other persons except the alleged incapacitated person shall be given as provided in 72-1-301. Waiver of notice by the person alleged to be incapacitated is not effective unless he attends the hearing or his waiver of notice is confirmed in an interview with the visitor. Representation of the alleged incapacitated person by a guardian ad litem is not necessary.

History: **En. 91A-5-309 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-309.**

72-5-315. Procedure for court appointment of guardian — hearing — examination — interview — procedural rights. (1) The incapacitated person or any person interested in his welfare, including the county attorney, may petition for a finding of incapacity and appointment of a guardian.

(2) Upon the filing of a petition, the court shall set a date for hearing on the issues of incapacity. The allegedly incapacitated person may have counsel of his own choice or the court may, in the interest of justice, appoint an appropriate official or attorney to represent him in the proceeding, who shall have the powers and duties of a guardian ad litem.

(3) The person alleged to be incapacitated shall be examined by a physician appointed by the court who shall submit his report in writing to the court and be interviewed by a visitor sent by the court. Whenever possible, the court shall appoint as visitor a person who has particular experience or expertise in treating, evaluating, or caring for persons with the kind of disabling condition that is alleged to be the cause of the incapacity. The visitor shall also interview the person who appears to have caused the petition to be filed and the person who is nominated to serve as guardian and visit the present place of abode of the person alleged to be incapacitated and the place it is proposed that he will be detained or reside if the requested appointment is made and submit his report in writing to the court. Whenever possible without undue delay or expense beyond the ability to pay of the alleged incapacitated person, the court, in formulating the judgment, shall utilize the services of any public or charitable agency that offers or is willing to evaluate the condition of the allegedly incapacitated person and make recommendations to the court regarding the most appropriate form of state intervention in his affairs.

(4) The person alleged to be incapacitated is entitled to be present at the hearing in person and to see or hear all evidence bearing upon his condition. He is entitled to be present by counsel, to present evidence, to cross-examine witnesses, including the court-appointed physician and the visitor, and to trial by jury. The issue may be determined at a closed hearing without a jury if the person alleged to be incapacitated or his counsel so requests.

History: **En. 91A-5-303 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 1, Ch. 222, L. 1977; amd. Sec. 2, Ch. 514, L. 1977; R.C.M. 1947, 91A-5-303; amd. Sec. 8, Ch. 344, L. 1981.**

Compiler's Comments

1981 Amendment: Inserted the second and the last sentences in (3); substituted "who appears to have caused the petition to be filed and the person who is nominated to serve as guardian" for "seeking appointment as guardian" after "interview the person" near the middle of (3).

72-5-316. Findings — order of appointment. (1) If the court is satisfied that the person for whom a guardianship is sought is incapacitated and that judicial intervention in his personal freedom of action and decision is necessary to meet essential requirements for his physical health or safety, it may appoint a full guardian having the powers described in 72-5-321 or a limited guardian having the powers described in the order. If the court is satisfied that the allegedly incapacitated person could handle the essential requirements for physical health or safety if his financial resources were managed by another, it shall order that the petition be treated as a petition for a protective order under part 4 of this chapter and proceed accordingly. Alternatively, the court may dismiss the proceeding or enter any other appropriate order that is not inconsistent with the specific provisions of this part. In issuing its order the court shall make specific findings of fact.

(2) The court may not invest a guardian with powers or duties beyond those sought in the petition and may, upon petition for a full guardianship, create a limited guardianship or conservatorship when the court determines that a limited guardianship or conservatorship is all that is required for the care and protection of the incapacitated person. The order shall specify whether a full or limited guardianship is being created. In the case of a limited guardianship, the order shall specify the particular powers and duties vested in the limited guardian and the period for which the limited guardianship is created.

(3) No incapacitated person may be limited in the exercise of any civil or political rights except those that are clearly inconsistent with the exercise of the powers granted to the guardian unless the court's order specifically provides for such limitations. The order shall state that all rights not specifically limited are retained by the incapacitated person.

History: En. 91A-5-304 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-304; amd. Sec. 9, Ch. 344, L. 1981.

Compiler's Comments

1981 Amendment: Substituted current text for former section. For former version see sec. 1, Ch. 365, L. 1974.

72-5-317. Temporary guardians. (1) If an incapacitated person has no guardian and an emergency exists, the court may exercise the power of a guardian pending notice and hearing.

(2) If an appointed guardian is not effectively performing his duties or if there is no appointed guardian and the court further finds that the welfare of the incapacitated person requires immediate action, it may, with or without notice, appoint a temporary guardian for the incapacitated person for a specified period not to exceed 6 months. The court may appoint either a full or a limited temporary guardian, depending on the needs and circumstances of the incapacitated person. The court may not invest a temporary guardian with more powers than are required by the circumstances necessitating the appointment. The order of appointment of a temporary guardian shall state whether a full or limited temporary guardianship is being created and, in the case of a limited temporary guardian, the specific powers and duties of the limited temporary guardian.

(3) In case there is no person available and willing to act as temporary guardian for an incapacitated person who is in need of a temporary guardian except a person or entity who is ineligible to act as guardian pursuant to the provisions of 72-5-312(4), the court may appoint as temporary guardian a person or entity who would otherwise be ineligible under that provision to act as guardian. This subsection does not permit the appointment of a person or entity who has an actual conflict of interest in regard to the purpose for which the temporary guardianship is sought. A temporary guardian who is otherwise ineligible shall serve until a person or entity who is not ineligible to serve as guardian and who is otherwise qualified to be guardian is appointed by the court to act as temporary guardian, but in no case may he serve for longer than 6 months.

(4) A temporary full guardian is entitled to the care and custody of the ward, and the authority of any permanent guardian previously appointed by the court is suspended so long as a temporary guardian has authority. A temporary limited guardian is entitled to exercise such powers as are specifically granted to him in the order of appointment, and the power of any permanent guardian previously appointed by the court to exercise those powers is suspended so long as the temporary limited guardian has authority. The court by specific order may suspend all authority of the permanent guardian upon appointment of a temporary limited guardian. A temporary guardian may be removed at any time. A temporary guardian shall make any report the court requires. In other respects the provisions of this code concerning guardians apply to temporary guardians.

History: En. 91A-5-310 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-310; amd. Sec. 10, Ch. 344, L. 1981.

Compiler's Comments

1981 Amendment: Inserted "or if there is no appointed guardian" after "duties" in the first sentence of (2); inserted the second through fourth sentences of (2); inserted subsection (3); inserted "full" before "guardian" at the beginning of (4); inserted the second and third sentences of (4).

72-5-318. Request for notice — interested person. (1) Any interested person who desires to be notified before any order is made in a guardianship proceeding may file with the clerk a request for notice upon payment of any fee required by statute or court rule. The clerk shall mail a copy of the demand to the guardian, if one has been appointed.

(2) A request is not effective unless it contains a statement showing the interest of the person making it and his address or that of his attorney and is effective only as to matters occurring after the filing. Any governmental agency paying or planning to pay benefits to the alleged incapacitated person is an interested person in guardianship proceedings.

History: En. Sec. 5, Ch. 344, L. 1981.

Compiler's Comments

Codification Instruction: Section 12, Ch. 344, L. 1981, provided: "Sections 1, 2, 5, 6, and 7 [72-5-306, 72-5-306, 72-5-318 through 72-5-320] are intended to be codified as an integral part of Title 72, chapter 5, part 3, and the provisions of Title 72, chapter 5, part 3, apply to sections 1, 2, 5, 6, and 7."

72-5-319. Contents of petition for appointment of guardian. (1) The petition for appointment of a guardian shall contain:

(a) the name, residence, and mailing address of the petitioner, his relationship to the alleged incapacitated person, and his interest in the matter;

(b) the name, residence, and mailing address of the alleged incapacitated person;

(c) the nature and degree of the alleged incapacity;

(d) if the petition in any way affects the management of the property of the alleged incapacitated person, the approximate value and description of his property, including any compensation, pension, insurance, or allowance to which he may be entitled;

(e) whether there is, in any state, a full guardian or limited guardian for the person or estate of the incapacitated person or a conservator of his property;

(f) the name, residence, and mailing address of the person whom the petitioner seeks to have appointed guardian;

(g) the names, residences, and nature of relationship, so far as is known or can reasonably be ascertained, of the persons most closely related by blood or marriage to the alleged incapacitated person;

(h) the name and residence of the person or institution having the care and custody of the alleged incapacitated person;

(i) the reasons why the appointment of a guardian is sought and whether a limited guardianship or full guardianship is requested;

(j) the facts supporting the allegations of incapacity and the need for a guardian;

(k) the specific areas of protection and assistance requested and the limitation of rights requested to be included in the order of appointment;

(l) in the case of a petition for limited guardianship, the particular powers and areas of authority that the petition seeks to have vested in the limited guardian as provided in 72-5-320 and the term for which the limited guardianship is requested;

(m) in the case of a petition for full guardianship, the length of time the guardianship is expected to last.

(2) The petition may also include a request for temporary guardianship as provided in 72-5-317 if the petitioner believes that the requisites of that section are met and that the appointment of a temporary guardian, pending the completion of guardianship proceedings, is necessary to protect the welfare of the alleged incapacitated person. The facts requiring appointment of a temporary guardian shall be stated with specificity.

History: **En. Sec. 6, Ch. 344, L. 1981.**

Compiler's Comments

Codification Instruction: Section 12, Ch. 344, L. 1981, provided: "Sections 1, 2, 5, 6, and 7 [72-5-305, 72-5-306, 72-5-318 through 72-5-320] are intended to be codified as an integral part of Title 72, chapter 5, part 3, and the provisions of Title 72, chapter 5, part 3, apply to sections 1, 2, 5, 6, and 7."

72-5-320. Purposes for establishment of limited guardianship. A petition seeking the establishment of a limited guardianship shall specify the particular powers that the limited guardian is proposed to exercise and the particular areas of protection and assistance required. The purposes for which a limited guardian may be appointed include:

(1) to care for and maintain the alleged incapacitated person;

(2) to assert and protect the rights and best interests of the alleged incapacitated person;

(3) to provide timely and informed consent to necessary medical procedures and procedures implemented in connection with habilitation and training programs;

(4) to assist in the acquisition of necessary training, habilitation, and education for the incapacitated person;

(5) to exercise any other powers, duties, or limitations in regard to the care of the incapacitated person or the management of his property that the petition shall explicitly specify and which may be no greater than the powers a full guardian can exercise.

History: **En. Sec. 7, Ch. 344, L. 1981.**

Compiler's Comments

Codification Instruction: Section 12, Ch. 344, L. 1981, provided: "Sections 1, 2, 5, 6, and 7 [72-5-305, 72-5-306, 72-5-318 through 72-5-320] are intended to be codified as an integral part of Title 72, chapter 5, part 3, and the provisions of Title 72, chapter 5, part 3, apply to sections 1, 2, 5, 6, and 7."

72-5-321. Powers and duties of guardian of incapacitated person. (1) The powers and duties of a limited guardian are those specified in the order appointing the guardian. The limited guardian is required to report the condition of the incapacitated person and of the estate that has been subject to his possession and control, as required by the court or by court rule.

(2) A full guardian of an incapacitated person has the same powers, rights, and duties respecting his ward that a parent has respecting his unemancipated minor child, except that a guardian is not liable to third persons for acts of the ward solely by reason of the parental relationship. In particular and without qualifying the foregoing, a full guardian has the following powers and duties, except as limited by order of the court:

(a) To the extent that it is consistent with the terms of any order by a court of competent jurisdiction relating to detention or commitment of the ward, he is entitled to custody of the person of his ward and may establish the ward's place of abode within or without this state.

(b) If entitled to custody of his ward, he shall make provision for the care, comfort, and maintenance of his ward and whenever appropriate arrange for his training and education. Without regard to custodial rights of the ward's person, he shall take reasonable care of his ward's clothing, furniture, vehicles, and other personal effects and commence protective proceedings if other property of his ward is in need of protection.

(c) A full guardian may give any consents or approvals that may be necessary to enable the ward to receive medical or other professional care, counsel, treatment, or service.

(d) If no conservator for the estate of the ward has been appointed, a full guardian may:

(i) institute proceedings to compel any person under a duty to support the ward or to pay sums for the welfare of the ward to perform his duty;

(ii) receive money and tangible property deliverable to the ward and apply the money and property for support, care, and education of the ward; but he may not use funds from his ward's estate for room and board which he, his spouse, parent, or child have furnished the ward unless a charge for the service is approved by order of the court made upon notice to at least one of the next of kin of the incompetent ward, if notice is possible. He must exercise care to conserve any excess for the ward's needs.

(e) A full guardian is required to report the condition of his ward and of the estate which has been subject to his possession or control, as required by the court or court rule.

(f) If a conservator has been appointed, all of the ward's estate received by the full guardian in excess of those funds expended to meet current expenses for support, care, and education of the ward must be paid to the conservator for management as provided in this code, and the full guardian must account to the conservator for funds expended.

(3) Any full guardian of one for whom a conservator also has been appointed shall control the custody and care of the ward. A limited guardian of a person for whom a conservator has been appointed shall control those aspects of the custody and care of the ward over which he is given authority by the order establishing the limited guardianship. The full guardian or limited guardian is entitled to receive reasonable sums for his services and for room and board furnished to the ward as agreed upon between him and the conservator, provided the amounts agreed upon are reasonable under the circumstances. The full guardian or limited guardian authorized to oversee such aspects of the incapacitated person's care may request the conservator to expend the ward's estate by payment to third persons or institutions for the ward's care and maintenance.

(4) No full guardian or limited guardian may involuntarily commit for mental health treatment or for treatment of a developmental disability or for observation or evaluation a ward who is himself unwilling or unable to give informed consent to such commitment, except as provided in 72-5-322, unless the procedures for involuntary commitment set forth in Title 53, chapters 20 and 21, are followed. This chapter does not abrogate any of the rights of mentally disabled persons provided for in Title 53, chapters 20 and 21.

History: En. 91A-5-312 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-312; amd. Sec. 11, Ch. 344, L. 1981.

Compiler's Comments

1981 Amendment: Inserted subsection (1); inserted "full" before "guardian" throughout section; substituted "limited" for "modified" near the end of the second sentence of (2); substituted "a full guardian" for "he" in (2)(d); inserted the second sentence of (3); inserted "The full guardian or limited guardian" in the third sentence of (3); inserted "or limited guardian authorized to oversee such aspects of the incapacitated person's care" in the last sentence of (3); added subsection (4).

72-5-322. Petition of guardian for treatment of ward. (1) If a guardian believes his ward should receive medical treatment for a mental disorder and the ward refuses, the court may, upon petition by the guardian, grant an order for evaluation or treatment, provided that no such order shall forcibly detain the ward against his will for more than 72 hours.

(2) The ward is entitled to an appointment of counsel and a hearing along with all the other rights guaranteed seriously mentally ill persons under 53-21-114, 53-21-115, 53-21-119, and 53-21-120.

History: En. 91A-5-314 by Sec. 3, Ch. 514, L. 1977; R.C.M. 1947, 91A-5-314.

72-5-323. Proceedings subsequent to appointment — concurrent jurisdiction of court where ward resides — venue. (1) The court where the ward resides has concurrent jurisdiction with the court which appointed the guardian or in which acceptance of a testamentary appointment was filed over resignation, removal, accounting, and other proceedings relating to the guardianship.

(2) If the court located where the ward resides is not the court in which acceptance of appointment is filed, the court in which proceedings subsequent to appointment are commenced shall in all appropriate cases notify the other court, in this or another state, and after consultation with that court determine whether to retain jurisdiction or transfer the proceedings to the other court, whichever may be in the best interest of the ward. A copy of any order accepting a resignation or removing a guardian shall be sent to the court in which acceptance of appointment is filed.

History: En. 91A-5-313 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-313.

72-5-324. Termination of appointment — how effected — certain liabilities and obligations not affected. (1) The authority and responsibility of a guardian for an incapacitated person terminates upon the death of the guardian or ward, the determination of incapacity of the guardian, or upon removal or resignation as provided in 72-5-325. Testamentary appointment under an informally probated will terminates if the will is later denied probate in a formal proceeding.

(2) Termination does not affect his liability for prior acts nor his obligation to account for funds and assets of his ward.

History: En. 91A-5-306 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-306.

72-5-325. Petition for removal or resignation of guardian — termination of incapacity. (1) On petition of the ward or any person interested in his welfare, the court may remove a guardian and appoint a successor if in the best interests of the ward. On petition of the guardian, the court may accept his resignation and make any other order which may be appropriate.

(2) An order adjudicating incapacity may specify a minimum period, not exceeding 1 year, during which no petition for an adjudication that the ward is no longer incapacitated may be filed without special leave. Subject to this restriction, the ward or any person interested in his welfare may petition for an order that he is no longer incapacitated and for removal or resignation of the guardian. A request for this order may be made by informal letter to the court or judge, and any person who knowingly interferes with transmission of this kind of request to the court or judge may be adjudged guilty of contempt of court.

(3) Before removing a guardian, accepting the resignation of a guardian, or ordering that a ward's incapacity has terminated, the court, following the same procedures to safeguard the rights of the ward as apply to a petition for appointment of a guardian, may send a visitor to the residence of the present guardian and to the place where the ward resides or is detained, to observe conditions and report in writing to the court.

History: En. 91A-5-307 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-307.

Part 4

Protection of Property of Minors and Persons Under Disability

72-5-401. Original petition for appointment or protective order — who may petition. The person to be protected, any person who is interested in his estate, affairs, or welfare, including his parent, guardian, or custodian, or any person who would be adversely affected by lack of effective management of his property and affairs may petition for the appointment of a conservator or for other appropriate protective order.

History: **En. 91A-5-404 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-404(1).**

72-5-402. Contents of petition. (1) The petition shall set forth to the extent known:

(a) the interest of the petitioner;

(b) the name, age, residence, and address of the person to be protected;

(c) the name and address of his guardian, if any;

(d) the name and address of his nearest relative known to the petitioner;

(e) a general statement of his property with an estimate of the value thereof, including any compensation, insurance, pension, or allowance to which he is entitled; and

(f) the reason why appointment of a conservator or other protective order is necessary.

(2) If the appointment of a conservator is requested, the petition also shall set forth the name and address of the person whose appointment is sought and the basis of his priority for appointment.

History: **En. 91A-5-404 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-404(2).**

72-5-403. Notice — waiver. (1) On a petition for appointment of a conservator or other protective order, the person to be protected and his spouse or, if none, his parents must be served personally with notice of the proceeding at least 14 days before the date of hearing if they can be found within the state, or if they cannot be found within the state, they must be given notice in accordance with 72-1-301. Waiver by the person to be protected is not effective unless he attends the hearing or, unless minority is the reason for the proceeding, waiver is confirmed in an interview with the visitor.

(2) Notice of a petition for appointment of a conservator or other initial protective order and of any subsequent hearing must be given to any person who has filed a request for notice under 72-5-404 and to interested persons and other persons as the court may direct. Except as otherwise provided in (1), notice shall be given in accordance with 72-1-301.

History: **En. 91A-5-405 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-405.**

72-5-404. Request for notice — interested person. (1) Any interested person who desires to be notified before any order is made in a protective proceeding may file with the clerk a request for notice subsequent to payment of any fee required by statute or court rule. The clerk shall mail a copy of the demand to the conservator if one has been appointed.

(2) A request is not effective unless it contains a statement showing the interest of the person making it and his address or that of his attorney and is effective only as to matters occurring after the filing. Any governmental agency paying or planning to pay benefits to the person to be protected is an interested person in protective proceedings.

History: **En. 91A-5-406 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-406.**

72-5-405. Exclusive and concurrent jurisdiction of particular court after petition and notice. After the service of notice in a proceeding seeking the appointment of a conservator or other protective order and until termination of the proceeding, the court in which the petition is filed has:

(1) exclusive jurisdiction to determine the need for a conservator or other protective order until the proceedings are terminated;

(2) exclusive jurisdiction to determine how the estate of the protected person which is subject to the laws of this state shall be managed, expended, or distributed to or for the use of the protected person or any of his dependents;

(3) concurrent jurisdiction to determine the validity of claims against the person or estate of the protected person and his title to any property or claim.

History: **En. 91A-5-402 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-402.**

72-5-406. Consent to jurisdiction by acceptance of appointment as conservator. (1) By accepting appointment, a conservator submits personally to the jurisdiction of the court in any proceeding relating to the estate that may be instituted by any interested person.

(2) Notice of any proceeding shall be delivered to the conservator or mailed to him by registered or certified mail at his address as listed in the petition for appointment or as thereafter reported to the court and to his address as then known to the petitioner.

History: **En. 91A-5-413 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-413.**

72-5-407. Venue. Venue for proceedings under this part is:

(1) in the place in this state where the person to be protected resides, whether or not a guardian has been appointed in another place; or

(2) if the person to be protected does not reside in this state, in any place where he has property.

History: **En. 91A-5-403 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-403.**

72-5-408. Procedure concerning hearing and order on original petition. (1) Upon receipt of a petition for appointment of a conservator or other protective order because of minority, the court shall set a date for hearing on the matters alleged in the petition. If, at any time in the proceeding, the court determines that the interests of the minor are or may be inadequately represented, it may appoint an attorney to represent the minor, giving consideration to the choice of the minor if 14 years of age or older. A lawyer appointed by the court to represent a minor has the powers and duties of a guardian ad litem.

(2) Upon receipt of a petition for appointment of a conservator or other protective order for reasons other than minority, the court shall set a date for hearing. Unless the person to be protected has counsel of his own choice, the court must appoint a lawyer to represent him who then has the powers and duties of a guardian ad litem. If the alleged disability is mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, or chronic intoxication, the court may direct that the person to be protected be examined by a physician designated by the court, preferably a physician who is not connected with any institution in which the person is a patient or is detained. The court may send a visitor to interview the person to be protected. The visitor may be a guardian ad litem or an officer or employee of the court.

(3) After hearing, upon finding that a basis for the appointment of a conservator or other protective order has been established, the court shall make an appointment or other appropriate protective order.

History: **En. 91A-5-407 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-407.**

72-5-409. Cause for appointment of conservator or issuance of protective order. Upon petition and after notice and hearing in accordance with the provisions of this part, the court may appoint a conservator or make other protective order for cause as follows:

(1) Appointment of a conservator or other protective order may be made in relation to the estate and affairs of a minor if the court determines that a minor owns money or property that requires management or protection which cannot otherwise be provided, has or may have business affairs which may be jeopardized or prevented by his minority, or that funds are needed for his support and education and that protection is necessary or desirable to obtain or provide funds.

(2) Appointment of a conservator or other protective order may be made in relation to the estate and affairs of a person if the court determines that:

(a) the person is unable to manage his property and affairs effectively for reasons such as mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication, confinement, detention by a foreign power, or disappearance; and

(b) the person has property which will be wasted or dissipated unless proper management is provided or that funds are needed for the support, care, and welfare of the person or those entitled to be supported by him and that protection is necessary or desirable to obtain or provide funds.

History: **En. 91A-5-401 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-401.**

72-5-410. Who may be appointed conservator — priorities. (1) The court may appoint an individual or a corporation with general power to serve as trustee as conservator of the estate of a protected person. The following are entitled to consideration for appointment in the order listed:

(a) a conservator, guardian of property, or other like fiduciary appointed or recognized by the appropriate court of any other jurisdiction in which the protected person resides;

(b) an individual or corporation nominated by the protected person if he is 14 or more years of age and has, in the opinion of the court, sufficient mental capacity to make an intelligent choice;

(c) the spouse of the protected person;

(d) an adult child of the protected person;

(e) a parent of the protected person or a person nominated by the will of a deceased parent;

(f) any relative of the protected person with whom he has resided for more than 6 months prior to the filing of the petition;

(g) a person nominated by the person who is caring for him or paying benefits to him.

(2) A person in priorities (a), (c), (d), (e), or (f) may nominate in writing a person to serve in his stead.

(3) With respect to persons having equal priority, the court is to select the one who is best qualified of those willing to serve. The court, for good cause, may pass over a person having priority and appoint a person having less priority or no priority.

History: En. 91A-5-410 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-410.

72-5-411. Bond — court may require — amount. (1) The court may require a conservator to furnish a bond conditioned upon faithful discharge of all duties of the trust according to law with sureties as it shall specify.

(2) Unless otherwise directed, the bond shall be in the amount of the aggregate capital value of the property of the estate in his control plus 1 year's estimated income minus the value of securities deposited under arrangements requiring an order of the court for their removal and the value of any land which the fiduciary, by express limitation of power, lacks power to sell or convey without court authorization.

(3) The court, in lieu of sureties on a bond, may accept other security for the performance of the bond, including a pledge of securities or a mortgage of land.

History: En. 91A-5-411 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-411.

72-5-412. Terms and requirements of bond. (1) The following requirements and provisions apply to any bond required under 72-5-411:

(a) Unless otherwise provided by the terms of the approved bond, sureties are jointly and severally liable with the conservator and with each other.

(b) By executing an approved bond of a conservator, the surety consents to the jurisdiction of the court which issued letters to the primary obligor in any proceeding pertaining to the fiduciary duties of the conservator and naming the surety as a party defendant. Notice of any proceeding shall be delivered to the surety or mailed to him by registered or certified mail at his address as listed with the court where the bond is filed and to his address as then known to the petitioner.

(c) On petition of a successor conservator or any interested person, a proceeding may be initiated against a surety for breach of the obligation of the bond of the conservator.

(d) The bond of the conservator is not void after the first recovery but may be proceeded against from time to time until the whole penalty is exhausted.

(2) No proceeding may be commenced against the surety on any matter as to which an action or proceeding against the primary obligor is barred by adjudication or limitation.

History: **En. 91A-5-412 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-412.**

72-5-413. Petitions for orders subsequent to appointment — interested persons. (1) Any person interested in the welfare of a person for whom a conservator has been appointed may file a petition in the appointing court for an order:

(a) requiring bond or security or additional bond or security or reducing bond;

(b) requiring an accounting for the administration of the trust;

(c) directing distribution;

(d) removing the conservator and appointing a temporary or successor conservator; or

(e) granting other appropriate relief.

(2) A conservator may petition the appointing court for instructions concerning his fiduciary responsibility.

(3) Upon notice and hearing, the court may give appropriate instructions or make any appropriate order.

(4) For purposes of this section, any person, institution, or agency which is furnishing or supplying any money for support or care of a person for whom a conservator has been appointed is a person interested in the welfare of such protected person.

History: **En. 91A-5-416 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-416.**

72-5-414. Resignation or removal of conservator for cause — successor conservator. The court may remove a conservator for good cause, upon notice and hearing, or accept the resignation of a conservator. After his death, resignation, or removal, the court may appoint another conservator. A conservator so appointed succeeds to the title and powers of his predecessor.

History: **En. 91A-5-415 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-415; amd. Sec. 5, Ch. 6, L. 1979.**

72-5-415 through 72-5-420 reserved.

72-5-421. Powers of court as to property and affairs of protected persons generally. The court has the following powers which may be exercised directly or through a conservator in respect to the estate and affairs of protected persons:

(1) While a petition for appointment of a conservator or other protective order is pending and after preliminary hearing and without notice to others, the court has power to preserve and apply the property of the person to be protected as may be required for his benefit or the benefit of his dependents.

(2) After hearing and upon determining that a basis for an appointment or other protective order exists with respect to a minor without other disability, the court has all those powers over the estate and affairs of the minor which are or might be necessary for the best interests of the minor, his family, and members of his household.

(3) After hearing and upon determining that a basis for an appointment or other protective order exists with respect to a person for reasons other than minority, the court has, for the benefit of the person and members of his household, all the powers over his estate and affairs which he could exercise if present and not under disability, except the power to make a will. These powers include but are not limited to power to:

(a) make gifts;

(b) convey or release his contingent and expectant interests in property, including marital property rights and any right of survivorship incident to joint tenancy or tenancy by the entirety;

(c) exercise or release his powers as trustee, personal representative, custodian for minors, conservator, or donee of a power of appointment;

(d) enter into contracts;

(e) create revocable or irrevocable trusts of property of the estate which may extend beyond his disability or life;

(f) exercise options of the disabled person to purchase securities or other property;

(g) exercise his rights to elect options and change beneficiaries under insurance and annuity policies and surrender the policies for their cash value;

(h) exercise his right to an elective share in the estate of his deceased spouse and renounce any interest by testate or intestate succession or by inter vivos transfer.

(4) The court may exercise or direct the exercise of its authority to exercise or release powers of appointment of which the protected person is donee, to renounce interests, to make gifts in trust or otherwise exceeding 20% of any year's income of the estate, or to change beneficiaries under insurance and annuity policies, only if satisfied, after notice and hearing, that it is in the best interests of the protected person and that he either is incapable of consenting or has consented to the proposed exercise of power.

(5) An order made pursuant to this section, determining that a basis for appointment of a conservator or other protective order exists, has no effect on the capacity of the protected person.

History: En. 91A-5-408 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-408.

72-5-422. Power of court to authorize particular protective arrangements or transactions without appointing conservator. (1) If it is established in a proper proceeding that a basis exists as described in 72-5-409 for affecting the property and affairs of a person, the court without appointing a conservator may authorize, direct, or ratify any transaction necessary or desirable to achieve any security, service, or care arrangement meeting the foreseeable needs of the protected person. Protective arrangements include but are not limited to:

(a) payment, delivery, deposit, or retention of funds or property;

(b) sale, mortgage, lease, or other transfer of property;

(c) entry into an annuity contract, a contract for life care, a deposit contract, or a contract for training and education; or

(d) addition to or establishment of a suitable trust.

(2) When it has been established in a proper proceeding that a basis exists as described in 72-5-409 for affecting the property and affairs of a

person, the court without appointing a conservator may authorize, direct, or ratify any contract, trust, or other transaction relating to the protected person's financial affairs or involving his estate if the court determines that the transaction is in the best interests of the protected person.

(3) Before approving a protective arrangement or other transaction under this section, the court shall consider the interests of creditors and dependents of the protected person and, in view of his disability, whether the protected person needs the continuing protection of a conservator. The court may appoint a special conservator to assist in the accomplishment of any protective arrangement or other transaction authorized under this section who, upon appointment, has the authority conferred by the order and serves until discharged by order after report to the court of all matters done pursuant to the order of appointment.

History: **En. 91A-5-409 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-409; amd. Sec. 6, Ch. 6, L. 1979.**

72-5-423. Fiduciary duty of conservator. In the exercise of his powers, a conservator is to act as a fiduciary and shall observe the standards of care applicable to trustees.

History: **En. 91A-5-417 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-417.**

72-5-424. Inventory and records. (1) Within 90 days after his appointment, every conservator shall prepare and file with the appointing court a complete inventory of the estate of the protected person, together with his oath or affirmation that it is complete and accurate so far as he is informed. The conservator shall provide a copy thereof to the protected person if he can be located, has attained the age of 14 years, and has sufficient mental capacity to understand these matters and to any parent or guardian with whom the protected person resides.

(2) The conservator shall keep suitable records of his administration and exhibit the same on request of any interested person.

History: **En. 91A-5-418 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-418.**

72-5-425. Title by appointment as conservator — appointment not transfer for certain purposes. (1) The appointment of a conservator vests in him title as trustee to all property of the protected person presently held or thereafter acquired, including title to any property theretofore held for the protected person by custodians or attorneys-in-fact.

(2) The appointment of a conservator is not a transfer or alienation within the meaning of general provisions of any federal or state statute or regulation, insurance policy, pension plan, contract, will, or trust instrument imposing restrictions upon or penalties for transfer or alienation by the protected person of his rights or interest, but this section does not restrict the ability of persons to make specific provision by contract or dispositive instrument relating to a conservator.

History: **En. 91A-5-420 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-420; amd. Sec. 7, Ch. 6, L. 1979.**

72-5-426. Letters as evidence of transfer of assets — recording. (1) Letters of conservatorship are evidence of transfer of all assets of a protected person to the conservator. An order terminating a conservatorship is evidence of transfer of all assets of the estate from the conservator to the protected person or his successors.

(2) Subject to the requirements of general statutes governing the filing or recordation of documents of title to land or other property, letters of conservatorship and orders terminating conservatorships may be filed or recorded to give record notice of title as between the conservator and the protected person.

History: **En. 91A-5-421 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-421.**

72-5-427. Powers of conservator in administration. (1) A conservator has all of the powers conferred herein and any additional powers conferred by law on trustees in this state. In addition, a conservator of the estate of an unmarried minor under the age of 18 years, as to whom no one has parental rights, has the duties and powers of a guardian of a minor described in 72-5-231 until the minor attains the age of 18 or marries, but the parental rights so conferred on a conservator do not preclude appointment of a guardian as provided by part 2.

(2) A conservator has power, without court authorization or confirmation, to invest and reinvest funds of the estate as would a trustee.

(3) A conservator, acting reasonably in efforts to accomplish the purpose for which he was appointed, may act without court authorization or confirmation to:

(a) collect, hold, and retain assets of the estate, including land in another state, until in his judgment disposition of the assets should be made, and the assets may be retained even though they include an asset in which he is personally interested;

(b) receive additions to the estate;

(c) continue or participate in the operation of any business or other enterprise;

(d) acquire an undivided interest in an estate asset in which the conservator in any fiduciary capacity holds an undivided interest;

(e) invest and reinvest estate assets in accordance with subsection (2);

(f) deposit estate funds in a bank including a bank operated by the conservator;

(g) acquire or dispose of an estate asset, including land in another state, for cash or on credit at public or private sale; and manage, develop, improve, exchange, partition, change the character of, or abandon an estate asset;

(h) make ordinary or extraordinary repairs or alterations in buildings or other structures, demolish any improvements, raze existing or erect new party walls or buildings;

(i) subdivide, develop, or dedicate land to public use; make or obtain the vacation of plats and adjust boundaries; adjust differences in valuation on exchange or partition by giving or receiving considerations; and dedicate easements to public use without consideration;

(j) enter for any purpose into a lease as lessor or lessee, with or without option to purchase or renew, for a term within or extending beyond the term of the conservatorship;

(k) enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;

(l) grant an option involving disposition of an estate asset; take an option for the acquisition of any asset;

(m) vote a security in person or by general or limited proxy;

(n) pay calls, assessments, and any other sums chargeable or accruing against or on account of securities;

(o) sell or exercise stock subscription or conversion rights; consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;

(p) hold a security in the name of a nominee or in other form without disclosure of the conservatorship so that title to the security may pass by delivery, but the conservator is liable for any act of the nominee in connection with the stock so held;

(q) insure the assets of the estate against damage or loss and the conservator against liability with respect to third persons;

(r) borrow money to be repaid from estate assets or otherwise; advance money for the protection of the estate or the protected person and for all expenses, losses, and liability sustained in the administration of the estate or because of the holding or ownership of any estate assets, and the conservator has a lien on the estate as against the protected person for advances so made;

(s) pay or contest any claim; settle a claim by or against the estate or the protected person by compromise, arbitration, or otherwise; and release, in whole or in part, any claim belonging to the estate to the extent that the claim is uncollectible;

(t) pay taxes, assessments, compensation of the conservator, and other expenses incurred in the collection, care, administration, and protection of the estate;

(u) allocate items of income or expense to either estate income or principal, as provided by law, including creation of reserves out of income for depreciation, obsolescence, or amortization or for depletion in mineral or timber properties;

(v) pay any sum distributable to a protected person or a dependent of the person who is a minor or incompetent, without liability to the conservator, by paying the sum to the distributee or by paying the sum for the use of the distributee either to his guardian or, if none, to a relative or other person with custody of his person;

(w) employ persons, including attorneys, auditors, investment advisors, or agents, even though they are associated with the conservator, to advise or assist him in the performance of his administrative duties; act upon their recommendation without independent investigation; and instead of acting personally, employ one or more agents to perform any act of administration, whether or not discretionary;

(x) prosecute or defend actions, claims, or proceedings in any jurisdiction for the protection of estate assets and of the conservator in the performance of his duties; and

(y) execute and deliver all instruments which will accomplish or facilitate the exercise of the powers vested in the conservator.

History: En. 91A-5-424 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-424.

72-5-428. Distributive powers and duties of conservator generally. (1) A conservator may expend or distribute income or principal of the estate without court authorization or confirmation for the support, education, care, or benefit of the protected person and his dependents in accordance with the following principles:

(a) The conservator is to consider recommendations relating to the appropriate standard of support, education, and benefit for the protected person made by a parent or guardian, if any. He may not be surcharged for sums paid to persons or organizations actually furnishing support, education, or care to the protected person pursuant to the recommendations of a parent or guardian of the protected person unless he knows that the parent or guardian is deriving personal financial benefit therefrom, including relief from any personal duty of support, or unless the recommendations are clearly not in the best interests of the protected person.

(b) The conservator is to expend or distribute sums reasonably necessary for the support, education, care, or benefit of the protected person with due regard to:

(i) the size of the estate, the probable duration of the conservatorship, and the likelihood that the protected person, at some future time, may be fully able to manage his affairs and the estate which has been conserved for him;

(ii) the accustomed standard of living of the protected person and members of his household;

(iii) other funds or sources used for the support of the protected person.

(c) The conservator may expend funds of the estate for the support of persons legally dependent on the protected person and others who are members of the protected person's household who are unable to support themselves and who are in need of support.

(d) Funds expended under this subsection may be paid by the conservator to any person, including the protected person, to reimburse for expenditures which the conservator might have made or in advance for services to be rendered to the protected person when it is reasonable to expect that they will be performed and where advance payments are customary or reasonably necessary under the circumstances.

(2) If the estate is ample to provide for the purposes implicit in the distributions authorized by the preceding subsections, a conservator for a protected person other than a minor has power to make gifts to charity and other objects as the protected person might have been expected to make in amounts which do not exceed in total for any year 20% of the income from the estate.

History: En. 91A-5-425 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-425(1), (2).

72-5-429. Distribution upon attainment of majority, termination of disability, or death of protected person. (1) When a minor who has not been adjudged disabled under 72-5-409(2) attains his majority, his conservator, after meeting all prior claims and expenses of administration, shall pay over and distribute all funds and properties to the former protected person as soon as possible.

(2) When the conservator is satisfied that a protected person's disability (other than minority) has ceased, the conservator, after meeting all prior claims and expenses of administration, shall pay over and distribute all funds and properties to the former protected person as soon as possible.

(3) If a protected person dies, the conservator shall deliver to the court for safekeeping any will of the deceased protected person which may have come into his possession, inform the executor or a beneficiary named therein that he has done so, and retain the estate for delivery to a duly appointed personal representative of the decedent or other persons entitled thereto. If after 40 days from the death of the protected person no other person has been appointed personal representative and no application or petition for appointment is before the court, the conservator may apply to exercise the powers and duties of a personal representative so that he may proceed to administer and distribute the decedent's estate without additional or further appointment. Upon application for an order granting the powers of a personal representative to a conservator, after notice to any person demanding notice under 72-3-106 and to any person nominated executor in any will of which the applicant is aware, the court may order the conferral of the power upon determining that there is no objection and endorse the letters of the conservator to note that the formerly protected person is deceased and that the conservator has acquired all of the powers and duties of a personal representative. The making and entry of an order under this section shall have the effect of an order of appointment of a personal representative as provided in 72-3-222, 72-3-223(1), and parts 5 through 10 of chapter 3, except that estate in the name of the conservator, after administration, may be distributed to the decedent's successors without prior retransfer to the conservator as personal representative.

History: **En. 91A-5-425 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-425(3) thru (5).**

72-5-430. Enlargement or limitation of powers of conservator by court. (1) Subject to the restrictions in 72-5-421(4), the court may confer on a conservator at the time of appointment or later, in addition to the powers conferred on him by 72-5-427, 72-5-428, and 72-5-429, any power which the court itself could exercise under subsections (2) and (3) of 72-5-421.

(2) The court may, at the time of appointment or later, limit the powers of a conservator conferred by the court and may at any time relieve him of any limitation. If the court limits any power conferred on the conservator by 72-5-427, 72-5-428, or 72-5-429, the limitation shall be endorsed upon his letters of appointment.

History: **En. 91A-5-426 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-426.**

72-5-431. Preservation of estate plan — right to inspect will. In investing the estate and in selecting assets of the estate for distribution under 72-5-428, in utilizing powers of revocation or withdrawal available for the support of the protected person and exercisable by the conservator or the court, the conservator and the court should take into account any known estate plan of the protected person, including his will, any revocable trust of which he is settlor, and any contract, transfer, or joint ownership arrangement with provisions for payment or transfer of benefits or interests at his death to another or others which he may have originated. The conservator may examine the will of the protected person.

History: **En. 91A-5-427 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-427.**

72-5-432. Compensation and expenses. If not otherwise compensated for services rendered, any visitor, lawyer, physician, conservator, or special conservator appointed in a protective proceeding is entitled to reasonable compensation from the estate.

History: **En. 91A-5-414 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-414.**

72-5-433. Claims against protected person — presentment, allowance, and payment — priorities. (1) A conservator must pay from the estate all just claims against the estate and against the protected person arising before or after the conservatorship upon their presentation and allowance. A claim may be presented by either of the following methods:

(a) The claimant may deliver or mail to the conservator a written statement of the claim indicating its basis, the name and address of the claimant, and the amount claimed.

(b) The claimant may file a written statement of the claim, in the form prescribed by rule, with the clerk of the court and deliver or mail a copy of the statement to the conservator.

(2) A presented claim is allowed if it is not disallowed by written statement mailed by the conservator to the claimant within 60 days after its presentation. A claim is deemed presented on the first to occur of receipt of the written statement of claim by the conservator or the filing of the claim with the court. The presentation of a claim tolls any statute of limitation relating to the claim until 30 days after its disallowance.

(3) A claimant whose claim has not been paid may petition the court for determination of his claim at any time before it is barred by the applicable statute of limitation and, upon due proof, procure an order for its allowance and payment from the estate. If a proceeding is pending against a protected person at the time of appointment of a conservator or is initiated against the protected person thereafter, the moving party must give notice of the proceeding to the conservator if the outcome is to constitute a claim against the estate.

(4) If it appears that the estate in conservatorship is likely to be exhausted before all existing claims are paid, preference is to be given to prior claims for the care, maintenance, and education of the protected person or his dependents and existing claims for expenses of administration.

History: **En. 91A-5-428 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-428.**

72-5-434. Transaction involving conflict of interest — voidable — exceptions. Any sale or encumbrance to a conservator, his spouse, agent or attorney, or any corporation or trust in which he has a substantial beneficial interest or any transaction which is affected by a substantial conflict of interest is voidable unless the transaction is approved by the court after notice to interested persons and others as directed by the court.

History: En. 91A-5-422 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-422.

72-5-435. Persons dealing with conservator — protection. (1) A person who in good faith either assists a conservator or deals with him for value in any transaction other than those requiring a court order as provided in 72-5-421 is protected as if the conservator properly exercised the power. The fact that a person knowingly deals with a conservator does not alone require the person to inquire into the existence of a power or the propriety of its exercise, except that restrictions on powers of conservators which are endorsed on letters as provided in 72-5-430 are effective as to third persons. A person is not bound to see to the proper application of estate assets paid or delivered to a conservator.

(2) The protection here expressed extends to instances in which some procedural irregularity or jurisdictional defect occurred in proceedings leading to the issuance of letters.

(3) The protection here expressed is not by substitution for that provided by comparable provisions of the laws relating to commercial transactions and laws simplifying transfers of securities by fiduciaries.

History: En. 91A-5-423 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-423.

72-5-436. Claims arising during conservatorship — individual liability of conservator. (1) Unless otherwise provided in the contract, a conservator is not individually liable on a contract properly entered into in his fiduciary capacity in the course of administration of the estate unless he fails to reveal his representative capacity and identify the estate in the contract.

(2) The conservator is individually liable for obligations arising from ownership or control of property of the estate or for torts committed in the course of administration of the estate only if he is personally at fault.

(3) Claims based on contracts entered into by a conservator in his fiduciary capacity on obligations arising from ownership or control of the estate or on torts committed in the course of administration of the estate may be asserted against the estate by proceeding against the conservator in his fiduciary capacity, whether or not the conservator is individually liable therefor.

(4) Any question of liability between the estate and the conservator individually may be determined in a proceeding for accounting, surcharge, or indemnification or other appropriate proceeding or action.

History: En. 91A-5-429 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-429.

72-5-437. Termination of conservatorship. The protected person, his personal representative, the conservator, or any other interested person may petition the court to terminate the conservatorship. A protected person seeking termination is entitled to the same rights and procedures as in an original proceeding for a protective order. The court, upon determining after notice and hearing that the minority or disability of the protected person has ceased, may terminate the conservatorship. Upon termination, title to assets of the estate passes to the former protected person or to his successors, subject to provision in the order for expenses of administration or to conveyances from the conservator to the former protected persons or his successors to evidence the transfer.

History: **En. 91A-5-430 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-430.**

72-5-438. Accounts — final and intermediate. (1) Every conservator must account to the court for his administration of the trust upon his resignation or removal and at other times as the court may direct. On termination of the protected person's minority or disability, a conservator may account to the court or he may account to the former protected person or his personal representative.

(2) Subject to appeal or vacation within the time permitted, an order made upon notice and hearing allowing an intermediate account of a conservator adjudicates as to his liabilities concerning the matters considered in connection therewith; and an order made upon notice and hearing allowing a final account adjudicates as to all previously unsettled liabilities of the conservator to the protected person or his successors relating to the conservatorship.

(3) In connection with any account, the court may require a conservator to submit to a physical check of the estate in his control, to be made in any manner the court may specify.

History: **En. 91A-5-419 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-419.**

72-5-439. Payment of debt and delivery of property to foreign conservator without local proceedings. (1) Any person indebted to a protected person or having possession of property or of an instrument evidencing a debt, stock, or chose in action belonging to a protected person may pay or deliver to a conservator, guardian of the estate, or other like fiduciary appointed by a court of the state or residence of the protected person upon being presented with proof of his appointment and an affidavit made by him or on his behalf stating:

(a) that no protective proceeding relating to the protected person is pending in this state; and

(b) that the foreign conservator is entitled to payment or to receive delivery.

(2) If the person to whom the affidavit is presented is not aware of any protective proceeding pending in this state, payment or delivery in response to the demand and affidavit discharges the debtor or possessor.

History: **En. 91A-5-431 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-431.**

Part 5

Powers of Attorney

72-5-501. When power of attorney not affected by disability. (1) Whenever a principal designates another his attorney-in-fact or agent by a power of attorney in writing and the writing contains the words, "This power of attorney shall not be affected by disability of the principal" or "This power of attorney shall become effective upon the disability of the principal" or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding his disability, the authority of the attorney-in-fact or agent is exercisable by him as provided in the power on behalf of the principal notwithstanding later disability or incapacity of the principal at law or later uncertainty as to whether the principal is dead or alive. All acts done by the attorney-in-fact or agent pursuant to the power during any period of disability or incompetence or uncertainty as to whether the principal is dead or alive have the same effect and inure to the benefit of and bind the principal or his heirs, devisees, and personal representative as if the principal were alive, competent, and not disabled.

(2) If a conservator thereafter is appointed for the principal, the attorney-in-fact or agent, during the continuance of the appointment, shall account to the conservator rather than the principal. The conservator has the same power the principal would have had if he were not disabled or incompetent to revoke, suspend, or terminate all or any part of the power of attorney or agency.

History: **En. 91A-5-501 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-501.**

72-5-502. Other powers of attorney not revoked until knowledge of death or disability. (1) The death, disability, or incompetence of any principal who has executed a power of attorney in writing other than a power as described by 72-5-501 does not revoke or terminate the agency as to the attorney-in-fact, agent, or other person who, without actual knowledge of the death, disability, or incompetence of the principal, acts in good faith under the power of attorney or agency. Any action so taken, unless otherwise invalid or unenforceable, binds the principal and his heirs, devisees, and personal representatives.

(2) An affidavit executed by the attorney-in-fact or agent stating that he did not have, at the time of doing an act pursuant to the power of attorney, actual knowledge of the revocation or termination of the power of attorney by death, disability, or incompetence is, in the absence of fraud, conclusive proof of the nonrevocation or nontermination of the power at that time. If the exercise of the power requires execution and delivery of any instrument which is recordable, the affidavit when authenticated for record is likewise recordable.

(3) This section shall not be construed to alter or affect any provision for revocation or termination contained in the power of attorney.

History: **En. 91A-5-502 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-502.**

CHAPTERS 6 THROUGH 9

RESERVED

CHAPTER 10

SUPPLEMENTARY GENERAL PROVISIONS ON PROBATE AND SUCCESSION

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Part 1

Jurisdiction and Courts

72-10-101. No requirement for orders and judgments to recite jurisdictional facts. Orders and judgments made by the court or judge in probate proceedings need not recite the existence of facts or the performance of acts upon which the jurisdiction of the court or judge may depend, but it is only necessary that they contain the matters ordered, except as otherwise provided in this title.

History: En. Sec. 314, p. 322, L. 1877; re-en. Sec. 314, 2nd Div. Rev. Stat. 1879; re-en. Sec. 314, 2nd Div. Comp. Stat. 1887; amd. Sec. 2910, C. Civ. Proc. 1895; re-en. Sec. 7701, Rev. C. 1907; re-en. Sec. 10355, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1704; re-en. Sec. 10355, R.C.M. 1935; R.C.M. 1947, 91-4301(part); amd. Sec. 8, Ch. 6, L. 1979.

72-10-102. Orders to be entered in minutes. All orders of the court or judge must be entered at length in the minute book of the court kept for probate proceedings.

History: En. Sec. 314, p. 322, L. 1877; re-en. Sec. 314, 2nd Div. Rev. Stat. 1879; re-en. Sec. 314, 2nd Div. Comp. Stat. 1887; amd. Sec. 2910, C. Civ. Proc. 1895; re-en. Sec. 7701, Rev. C. 1907; re-en. Sec. 10355, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1704; re-en. Sec. 10355, R.C.M. 1935; R.C.M. 1947, 91-4301(part).

72-10-103. Orders affecting title to real property to be recorded. When an order is made setting apart a homestead, confirming a sale, making distribution of real property, or determining any other matter affecting the title to real property, a certified copy of the same must be recorded in the office of the county clerk of the county in which the property is situated.

History: En. Sec. 330, p. 325, L. 1877; re-en. Sec. 330, 2nd Div. Rev. Stat. 1879; re-en. Sec. 330, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2926, C. Civ. Proc. 1895; re-en. Sec. 7717, Rev. C. 1907; re-en. Sec. 10371, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1719; re-en. Sec. 10371, R.C.M. 1935; R.C.M. 1947, 91-4317.

72-10-104. Service on guardian equivalent to service on ward interested in estate. Whenever a minor, mentally ill, or incompetent person has a guardian of his estate residing in this state, personal service upon the guardian of any process, notice, or order of the court or judge concerning the estate of a deceased person in which the ward is interested is equivalent to service upon the ward, and the guardian shall attend to the interests of the ward in the matter. Such guardian may also appear for his ward and waive any process, notice, or order to show cause which an adult or a person of sound mind might do.

History: En. Sec. 332, p. 326, L. 1877; re-en. Sec. 332, 2nd Div. Rev. Stat. 1879; re-en. Sec. 332, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2929, C. Civ. Proc. 1895; re-en. Sec. 7720, Rev. C. 1907; re-en. Sec. 10374, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1722; re-en. Sec. 10374, R.C.M. 1935; R.C.M. 1947, 91-4320; amd. Sec. 9, Ch. 6, L. 1979.

72-10-105. Disqualification of judges. (1) No will shall be admitted to probate or letters testamentary or of administration granted before any judge who is interested as next of kin to the decedent or as legatee or devisee under the will or when he is named as executor or trustee in the will or is a witness thereto.

(2) Any judge who shall have acted as attorney for the decedent in the preparation or drawing of the will or as the attorney of the executor or administrator of the estate of any deceased person in the administration of the estate of such deceased person or as the attorney of any legatee or devisee under the will or heir of the decedent or of any person or persons claiming to be such legatee, devisee, or heir shall, from and after March 5, 1897, be disqualified from making any order or rendering any judgment or decree or doing anything whatsoever in the matter of the estate of such deceased person.

History: En. Sec. 109, p. 264, L. 1877; re-en. Sec. 109, 2nd Div. Rev. Stat. 1879; re-en. Sec. 109, 2nd Div. Comp. Stat. 1887; amd. Sec. 2530, C. Civ. Proc. 1895; en. Sec. 1, p. 244, L. 1897; re-en. Sec. 7484, Rev. C. 1907; re-en. Sec. 10120, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1430; re-en. Sec. 10120, R.C.M. 1935; R.C.M. 1947, 91-2001(part).

72-10-106. Duty of disqualified judge to request substitute — duty of substitute. (1) Whenever it shall be made to appear of record that any judge presiding in any court in which proceedings in probate matters have been or are about to be instituted is disqualified from acting therein, it shall be the duty of such judge to, as soon thereafter as practicable, request the nearest district judge to preside in the place of the judge so disqualified in such proceedings.

(2) It shall be the duty of the judge so requested, if he be not himself disqualified, from time to time as occasion may require, to preside in the place of the disqualified judge in all proceedings in such probate matters.

History: En. Sec. 109, p. 264, L. 1877; re-en. Sec. 109, 2nd Div. Rev. Stat. 1879; re-en. Sec. 109, 2nd Div. Comp. Stat. 1887; amd. Sec. 2530, C. Civ. Proc. 1895; en. Sec. 1, p. 244, L. 1897; re-en. Sec. 7484, Rev. C. 1907; re-en. Sec. 10120, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1430; re-en. Sec. 10120, R.C.M. 1935; R.C.M. 1947, 91-2001(part).

72-10-107. Proceeding in chambers — jury trial. (1) All orders mentioned in this title and all proceedings in matters of probate may be made or heard either before the court or the judge thereof in chambers.

(2) When a jury is needed, the court or judge may order the trial to take place in court as provided in Title 25.

History: En. Sec. 317, p. 322, L. 1877; re-en. Sec. 317, 2nd Div. Rev. Stat. 1879; re-en. Sec. 317, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2913, C. Civ. Proc. 1895; re-en. Sec. 7704, Rev. C. 1907; re-en. Sec. 10358, R.C.M. 1921; re-en. Sec. 10358, R.C.M. 1935; R.C.M. 1947, 91-4304; amd. Sec. 10, Ch. 6, L. 1979.

72-10-108. Citations — contents. Citations must be directed to the person to be cited, signed by the clerk, and issued under the seal of the court and must contain:

(1) the title of the proceeding;

(2) the style of the citation, which shall be "The State of Montana";

(3) a brief statement of the nature of the proceeding;

(4) a direction that the person cited do appear at a time and place specified.

History: En. Sec. 318, p. 322, L. 1877; re-en. Sec. 318, 2nd Div. Rev. Stat. 1879; re-en. Sec. 318, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2914, C. Civ. Proc. 1895; re-en. Sec. 7705, Rev. C. 1907; amd. Sec. 1, Ch. 40, L. 1921; re-en. Sec. 10359, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1707; re-en. Sec. 10359, R.C.M. 1935; R.C.M. 1947, 91-4305.

72-10-109. Citation — how issued. The citation may be issued by the clerk, upon the application of any party, without an order of the judge, except in cases in which such order is expressly required by the provisions of this title.

History: En. Sec. 319, p. 323, L. 1877; re-en. Sec. 319, 2nd Div. Rev. Stat. 1879; re-en. Sec. 319, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2915, C. Civ. Proc. 1895; re-en. Sec. 7706, Rev. C. 1907; re-en. Sec. 10360, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1708; re-en. Sec. 10360, R.C.M. 1935; R.C.M. 1947, 91-4306; amd. Sec. 11, Ch. 6, L. 1979.

72-10-110. Citation — how and when served. (1) The citation must be served in the same manner as a summons in a civil action.

(2) When no other time is specifically prescribed in this title, citations must be served at least 5 days before the return day thereof.

History: En. Secs. 320, 322, p. 323, L. 1877; re-en. Secs. 320, 322, 2nd Div. Rev. Stat. 1879; re-en. Secs. 320, 322, 2nd Div. Comp. Stat. 1887; re-en. Secs. 2916, 2918, C. Civ. Proc. 1895; re-en. Secs. 7707, 7709, Rev. C. 1907; re-en. Secs. 10361, 10363, R.C.M. 1921; Cal. C. Civ. Proc. Secs. 1709, 1711; re-en. Secs. 10361, 10363, R.C.M. 1935; R.C.M. 1947, 91-4307, 91-4309; amd. Sec. 12, Ch. 6, L. 1979.

72-10-111. Costs — discretion of court in ordering payment. When it is not otherwise prescribed in this title, the district court or supreme court on appeal may, in its discretion, order costs to be paid by any party to the proceedings or out of the assets of the estate, as justice may require. Execution for costs may issue out of the district court.

History: En. Sec. 331, p. 326, L. 1877; re-en. Sec. 331, 2nd Div. Rev. Stat. 1879; re-en. Sec. 331, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2927, C. Civ. Proc. 1895; re-en. Sec. 7718, Rev. C. 1907; re-en. Sec. 10372, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1720; re-en. Sec. 10372, R.C.M. 1935; R.C.M. 1947, 91-4318; amd. Sec. 13, Ch. 6, L. 1979.

72-10-112. Removal of executor, administrator, or guardian for contempt. Whenever an executor or administrator or guardian is committed for contempt in disobeying any lawful order of the court or judge and has remained in custody for 30 days without obeying such order or purging himself otherwise of the contempt, the court or judge may, by order reciting the facts and without further showing or notice, revoke his letters and appoint some other person entitled thereto executor or administrator or guardian in his stead.

History: En. Sec. 332, p. 326, L. 1877; re-en. Sec. 332, 2nd Div. Rev. Stat. 1879; re-en. Sec. 332, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2928, C. Civ. Proc. 1895; re-en. Sec. 7719, Rev. C. 1907; re-en. Sec. 10373, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1721; re-en. Sec. 10372, R.C.M. 1935; R.C.M. 1947, 91-4319.

72-10-113. Time for appeal. The appeal must be taken within 60 days after the order or judgment is entered.

History: En. Sec. 326, p. 324, L. 1877; re-en. Sec. 326, 2nd Div. Rev. Stat. 1879; re-en. Sec. 326, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2922, C. Civ. Proc. 1895; re-en. Sec. 7713, Rev. C. 1907; re-en. Sec. 10367, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1715; re-en. Sec. 10367, R.C.M. 1935; R.C.M. 1947, 91-4313.

Part 2

Notice Generally

72-10-201. Personal notice given by citation. When personal notice is required and no mode of giving it is prescribed, it must be given by citation.

History: En. Sec. 321, p. 323, L. 1877; re-en. Sec. 321, 2nd Div. Rev. Stat. 1879; re-en. Sec. 321, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2917, C. Civ. Proc. 1895; re-en. Sec. 7708, Rev. C. 1907; re-en. Sec. 10362, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1710; re-en. Sec. 10362, R.C.M. 1935; R.C.M. 1947, 91-4308.

72-10-202. Recorded order to impart notice from date of filing. When it is provided in this title that any order of the court or judge or a copy thereof must be recorded in the office of the county clerk, notice of its contents, from the time of filing it for record, is imparted to all persons.

History: En. Sec. 316, p. 322, L. 1877; re-en. Sec. 316, 2nd Div. Rev. Stat. 1879; re-en. Sec. 316, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2912, C. Civ. Proc. 1895; re-en. Sec. 7703, Rev. C. 1907; re-en. Sec. 10357, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1706; re-en. Sec. 10357, R.C.M. 1935; R.C.M. 1947, 91-4303; amd. Sec. 14, Ch. 6, L. 1979.

72-10-203. One publication of description of real estate sufficient. When a complete description of the real property of an estate sought to be sold has been given and published in a newspaper as required in the order to show cause why the sale should not be made, such description need not be published in any subsequent notice of sale or notice of petition for the confirmation thereof. It is sufficient to refer to the description contained in the publication of the first notice as being proved and on file in the court.

History: En. Sec. 323, p. 324, L. 1877; re-en. Sec. 323, 2nd Div. Rev. Stat. 1879; re-en. Sec. 323, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2919, C. Civ. Proc. 1895; re-en. Sec. 7710, Rev. C. 1907; re-en. Sec. 10364, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1712; re-en. Sec. 10364, R.C.M. 1935; R.C.M. 1947, 91-4310.

72-10-204. Manner of publication. When any publication is ordered in any probate or guardianship proceeding, the provisions of 25-3-502 and 25-3-503 shall, unless otherwise expressly provided by statute or by the order of the court, govern the manner of making such publication.

History: En. Sec. 315, p. 322, L. 1877; re-en. Sec. 315, 2nd Div. Rev. Stat. 1879; re-en. Sec. 315, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2911, C. Civ. Proc. 1895; re-en. Sec. 7702, Rev. C. 1907; re-en.

Sec. 10356, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1705; re-en. Sec. 10356, R.C.M. 1935; amd. Sec. 1, Ch. 7, L. 1947; R.C.M. 1947, 91-4302.

CHAPTER 11

INTESTATE SUCCESSION AND WILLS SUPPLEMENTARY PROVISIONS

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Part 1

Intestate Succession

72-11-101. Degrees of kindred — how computed. The degree of kindred is established by the number of generations, and each generation is called a degree.

History: En. Secs. 536-557, pp. 366-370, L. 1877; re-en. Secs. 536-557, 2nd Div. Rev. Stat. 1879; re-en. Secs. 536-557, 2nd Div. Comp. Stat. 1887; en. Sec. 1855, Civ. C. 1895; re-en. Sec. 4823, Rev. C. 1907; re-en. Sec. 7076, R.C.M. 1921; Cal. Civ. C. Sec. 1389; re-en. Sec. 7076, R.C.M. 1935; R.C.M. 1947, 91-406.

72-11-102. Degrees of kindred — lineal and collateral consanguinity. The series of degrees forms the line; the series of degrees between persons who descend from one another is called direct or lineal consanguinity; and the series of degrees between persons who do not descend from one another but spring from a common ancestor is called the collateral line or collateral consanguinity.

History: En. Secs. 536-557, pp. 366-370, L. 1877; re-en. Secs. 536-557, 2nd Div. Rev. Stat. 1879; re-en. Secs. 536-557, 2nd Div. Comp. Stat. 1887; en. Sec. 1856, Civ. C. 1895; re-en. Sec. 4824, Rev. C. 1907; re-en. Sec. 7077, R.C.M. 1921; Cal. Civ. C. Sec. 1390; re-en. Sec. 7077, R.C.M. 1935; R.C.M. 1947, 91-407.

72-11-103. Degrees of kindred — ascending and descending direct line. The direct line is divided into a direct line descending and a direct line ascending. The first is that which connects the ancestors with those who descend from him. The second is that which connects a person with those from whom he descends.

History: En. Secs. 536-557, pp. 366-370, L. 1877; re-en. Secs. 536-557, 2nd Div. Rev. Stat. 1879; re-en. Secs. 536-557, 2nd Div. Comp. Stat. 1887; en. Sec. 1857, Civ. C. 1895; re-en. Sec. 4825, Rev. C. 1907; re-en. Sec. 7078, R.C.M. 1921; Cal. Civ. C. Sec. 1391; re-en. Sec. 7078, R.C.M. 1935; R.C.M. 1947, 91-408.

72-11-104. Degrees of kindred — computation of degrees in direct line. In the direct line there are as many degrees as there are generations. Thus, the son is with regard to the father in the first degree; the grandson in the second; and vice versa with regard to the father and grandfather toward the sons and grandsons.

History: En. Secs. 536-557, pp. 366-370, L. 1877; re-en. Secs. 536-557, 2nd Div. Rev. Stat. 1879; re-en. Secs. 536-557, 2nd Div. Comp. Stat. 1887; en. Sec. 1858, Civ. C. 1895; re-en. Sec. 4826, Rev. C. 1907; re-en. Sec. 7079, R.C.M. 1921; Cal. Civ. C. Sec. 1392; re-en. Sec. 7079, R.C.M. 1935; R.C.M. 1947, 91-409.

72-11-105. Degrees of kindred — computation of degrees in collateral line. In the collateral line, the degrees are counted by generations from one of the relations up to the common ancestor and from the common ancestor to the other relations. In such computation the decedent is excluded, the relative included, and the ancestor counted but once. Thus, brothers are related in the second degree, uncle and nephew in the third degree, cousins-german in the fourth, and so on.

History: En. Secs. 536-557, pp. 366-370, L. 1877; re-en. Secs. 536-557, 2nd Div. Rev. Stat. 1879; re-en. Secs. 536-557, 2nd Div. Comp. Stat. 1887; en. Sec. 1859, Civ. C. 1895; re-en. Sec. 4827, Rev. C. 1907; re-en. Sec. 7080, R.C.M. 1921; Cal. Civ. C. Sec. 1393; re-en. Sec. 7080, R.C.M. 1935; re-en. Sec. 7080, R.C.M. 1935; R.C.M. 1947, 91-410.

Part 2

Wills — Execution and Revocation

72-11-201. Joint or mutual will. A conjoint or mutual will is valid, but it may be revoked by any of the testators in like manner with any other will.

History: En. Sec. 441, p. 349, L. 1877; re-en. Sec. 441, 2nd Div. Rev. Stat. 1879; re-en. Sec. 441, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1726, Civ. C. 1895; re-en. Sec. 4729, Rev. C. 1907; re-en. Sec. 6983, R.C.M. 1921; Cal. Civ. C. Sec. 1279; Field Civ. C. Sec. 548; re-en. Sec. 6983, R.C.M. 1935; R.C.M. 1947, 91-110.

72-11-202. Will of conditional validity. A will, the validity of which is made by its own terms conditional, may be denied probate, according to the event, with reference to the condition.

History: En. Sec. 443, p. 350, L. 1877; re-en. Sec. 443, 2nd Div. Rev. Stat. 1879; re-en. Sec. 443, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1728, Civ. C. 1895; re-en. Sec. 4731, Rev. C. 1907; re-en. Sec. 6985, R.C.M. 1921; Cal. Civ. C. Sec. 1281; Field Civ. C. Sec. 549; re-en. Sec. 6985, R.C.M. 1935; R.C.M. 1947, 91-112.

72-11-203. Subsequent incompetency of witness — effect. If the subscribing witnesses to a will are competent at the time of attesting its execution, their subsequent incompetency, from whatever cause it may arise, does not prevent the probate and allowance of the will if it is otherwise satisfactorily proved.

History: En. Sec. 5, p. 556, Cod. Stat. 1871; re-en. Sec. 442, p. 350, L. 1877; re-en. Sec. 442, 2nd Div. Rev. Stat. 1879; re-en. Sec. 442, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1727, Civ. C. 1895; re-en. Sec. 4730, Rev. C. 1907; re-en. Sec. 6984, R.C.M. 1921; Cal. Civ. C. Sec. 1280; re-en. Sec. 6984, R.C.M. 1935; R.C.M. 1947, 91-111.

72-11-204. Alteration of testator's interest by subsequent instrument — when a revocation. If the instrument by which an alteration is made of the testator's interest in a thing previously disposed of by his will expresses his intent that it shall be a revocation or if it contains provisions wholly inconsistent with the terms and nature of the testamentary disposition, it operates as a revocation thereof, unless such inconsistent provisions depend on a condition or contingency by reason of which they do not take effect.

History: En. Sec. 464, p. 354, L. 1877; re-en. Sec. 464, 2nd Div. Rev. Stat. 1879; re-en. Sec. 464, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1749, Civ. C. 1895; re-en. Sec. 4752, Rev. C. 1907; re-en. Sec. 7006, R.C.M. 1921; Cal. Civ. C. Sec. 1304; Field Civ. C. Sec. 572; re-en. Sec. 7006, R.C.M. 1935; R.C.M. 1947, 91-133.

72-11-205. Revocation of duplicate. The revocation of a will executed in duplicate may be made by revoking one of the duplicates.

History: En. Sec. 455, p. 352, L. 1877; re-en. Sec. 455, 2nd Div. Rev. Stat. 1879; re-en. Sec. 455, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1740, Civ. C. 1895; re-en. Sec. 4743, Rev. C. 1907; re-en. Sec. 6997, R.C.M. 1921; Field Civ. C. Sec. 564; re-en. Sec. 6997, R.C.M. 1935; R.C.M. 1947, 91-124.

Part 3

Wills — Construction and Operation

72-11-301. Rules of construction — applicability. In interpreting a will subject to the law of this state, the rules prescribed by the following sections of this part are to be observed, unless an intention to the contrary clearly appears.

History: En. Sec. 476, p. 356, L. 1877; re-en. Sec. 476, 2nd Div. Rev. Stat. 1879; re-en. Sec. 476, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1772, Civ. C. 1895; re-en. Sec. 4765, Rev. C. 1907; re-en. Sec. 7018, R.C.M. 1921; Cal. Civ. C. Sec. 1319; Field Civ. C. Sec. 581; re-en. Sec. 7018, R.C.M. 1935; R.C.M. 1947, 91-203.

72-11-302. Words to be construed in ordinary sense. The words of a will are to be taken in their ordinary and grammatical sense, unless a clear intention to use them in another sense can be collected and that other can be ascertained.

History: En. Sec. 481, p. 357, L. 1877; re-en. Sec. 481, 2nd Div. Rev. Stat. 1879; re-en. Sec. 481, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1777, Civ. C. 1895; re-en. Sec. 4770, Rev. C. 1907; re-en. Sec. 7023, R.C.M. 1921; Cal. Civ. C. Sec. 1324; Field Civ. C. Sec. 586; re-en. Sec. 7023, R.C.M. 1935; R.C.M. 1947, 91-208.

72-11-303. Words to be construed to have some effect. The words of a will are to receive an interpretation which will give to every expression some effect, rather than one which will render any of the expressions inoperative.

History: En. Sec. 482, p. 357, L. 1877; re-en. Sec. 482, 2nd Div. Rev. Stat. 1879; re-en. Sec. 482, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1778, Civ. C. 1895; re-en. Sec. 4771, Rev. C. 1907; re-en. Sec. 7024, R.C.M. 1921; Cal. Civ. C. Sec. 1325; Field Civ. C. Sec. 587; re-en. Sec. 7024, R.C.M. 1935; R.C.M. 1947, 91-209.

72-11-304. Extrinsic evidence inadmissible — exceptions. (1) When the terms of an agreement have been reduced to writing by the parties, it is to be considered as containing all those terms, and therefore there can be between the parties and their representatives or successors in interest no evidence of the terms of the agreement other than the contents of the writing, except in the following cases:

(a) where a mistake or imperfection of the writing is put in issue by the pleadings;

(b) where the validity of the agreement is the fact in dispute.

(2) But this section does not exclude other evidence of the circumstances under which the agreement was made or to which it relates, as defined in 1-4-102, or to explain an extrinsic ambiguity or to establish illegality or fraud.

(3) The term agreement includes deeds and wills, as well as contracts between parties.

History: En. Sec. 610, p. 198, L. 1877; re-en. Sec. 610, 1st Div. Rev. Stat. 1879; re-en. Sec. 628, 1st Div. Comp. Stat. 1887; re-en. Sec. 3132, C. Civ. Proc. 1895; re-en. Sec. 7873, Rev. C. 1907; re-en. Sec. 10517, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1856; re-en. Sec. 10517, R.C.M. 1935; R.C.M. 1947, 93-401-13.

72-11-305. Ambiguity explained by reference in other part of will. Where the meaning of any part of a will is ambiguous or doubtful, it may be explained by any reference thereto or recital thereof in another part of the will.

History: En. Sec. 480, p. 356, L. 1877; re-en. Sec. 480, 2nd Div. Rev. Stat. 1879; re-en. Sec. 480, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1776, Civ. C. 1895; re-en. Sec. 4769, Rev. C. 1907; re-en. Sec. 7022, R.C.M. 1921; Cal. Civ. C. Sec. 1323; Field Civ. C. Sec. 585; re-en. Sec. 7022, R.C.M. 1935; R.C.M. 1947, 91-207.

72-11-306. Several instruments to be construed together. Several testamentary instruments executed by the same testator are to be taken and construed together as one instrument.

History: En. Sec. 477, p. 356, L. 1877; re-en. Sec. 477, 2nd Div. Rev. Stat. 1879; re-en. Sec. 477, 2nd Div. comp. Stat. 1887; re-en. Sec. 1773, Civ. C. 1895; re-en. Sec. 4766, Rev. C. 1907; re-en. Sec. 7019, R.C.M. 1921; Cal. Civ. C. Sec. 1320; Field Civ. C. Sec. 582; re-en. Sec. 7019, R.C.M. 1935; R.C.M. 1947, 91-204.

72-11-307. Harmonizing various parts. All the parts of a will are to be construed in relation to each other so as, if possible, to form one consistent whole; but where several parts are absolutely irreconcilable, the latter must prevail.

History: En. Sec. 478, p. 356, L. 1877; re-en. Sec. 478, 2nd Div. Rev. Stat. 1879; re-en. Sec. 478, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1774, Civ. C. 1895; re-en. Sec. 4767, Rev. C. 1907; re-en. Sec. 7020, R.C.M. 1921; Cal. Civ. C. Sec. 1321; Field Civ. C. Sec. 583; re-en. Sec. 7020, R.C.M. 1935; R.C.M. 1947, 91-205.

72-11-308. Clear devise not affected by other parts of will. A clear and distinct devise or bequest cannot be affected by any reasons assigned therefor or by any other words not equally clear and distinct or by inference or argument from other parts of the will or by an inaccurate recital of or reference to its contents in another part of the will.

History: En. Sec. 479, p. 356, L. 1877; re-en. Sec. 479, 2nd Div. Rev. Stat. 1879; re-en. Sec. 479, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1775, Civ. C. 1895; re-en. Sec. 4768, Rev. C. 1907; re-en. Sec. 7021, R.C.M. 1921; Cal. Civ. C. Sec. 1322; Field Civ. C. Sec. 584; re-en. Sec. 7021, R.C.M. 1935; R.C.M. 1947, 91-206.

72-11-309. Technical words to be construed in technical sense. Technical words in a will are to be taken in their technical sense unless the context clearly indicates a contrary intention.

History: En. Sec. 484, p. 357, L. 1877; re-en. Sec. 484, 2nd Div. Rev. Stat. 1879; re-en. Sec. 484, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1780, Civ. C. 1895; re-en. Sec. 4773, Rev. C. 1907; re-en. Sec. 7026, R.C.M. 1921; Cal. Civ. C. Sec. 1327; Field Civ. C. Sec. 589; re-en. Sec. 7026, R.C.M. 1935; R.C.M. 1947, 91-211.

72-11-310. Technical words not necessary. Technical words are not necessary to give effect to any species of disposition by a will.

History: En. Sec. 485, p. 357, L. 1877; re-en. Sec. 485, 2nd Div. Rev. Stat. 1879; re-en. Sec. 485, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1781, Civ. C. 1895; re-en. Sec. 4774, Rev. C. 1907; re-en. Sec. 7027, R.C.M. 1921; Cal. Civ. C. Sec. 1328; Field Civ. C. Sec. 590; re-en. Sec. 7027, R.C.M. 1935; R.C.M. 1947, 91-212.

72-11-311. Words of inheritance not necessary to devise a fee. The term "heirs" or other words of inheritance are not requisite to devise a fee, and a devise of real property passes all the estate of the testator, unless otherwise limited.

History: En. Sec. 486, p. 357, L. 1877; re-en. Sec. 486, 2nd Div. Rev. Stat. 1879; re-en. Sec. 486, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1782, Civ. C. 1895; re-en. Sec. 4775, Rev. C. 1907; re-en. Sec. 7028, R.C.M. 1921; Cal. Civ. C. Sec. 1329; Field Civ. C. Sec. 591; re-en. Sec. 7028, R.C.M. 1935; R.C.M. 1947, 91-213.

72-11-312. Words referring to death or survivorship — construction. Words in a will referring to death or survivorship, simply, relate to the time of the testator's death, unless possession is actually postponed, when they must be referred to the time of possession.

History: En. Sec. 493, p. 358, L. 1877; re-en. Sec. 493, 2nd Div. Rev. Stat. 1879; re-en. Sec. 493, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1789, Civ. C. 1895; re-en. Sec. 4782, Rev. C. 1907; re-en. Sec. 7035, R.C.M. 1921; Cal. Civ. C. Sec. 1336; Field Civ. C. Sec. 598; re-en. Sec. 7035, R.C.M. 1935; R.C.M. 1947, 91-220.

72-11-313. Admissibility of evidence to correct errors and omissions as to description. When, applying a will, it is found that there is an imperfect description or that no person or property exactly answers the description, mistakes and omissions must be corrected if the error appears from the context of the will or from extrinsic evidence; but evidence of the declarations of the testator as to his intentions cannot be received.

History: En. Sec. 497, p. 359, L. 1877; re-en. Sec. 497, 2nd Div. Rev. Stat. 1879; re-en. Sec. 497, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1793, Civ. C. 1895; re-en. Sec. 4786, Rev. C. 1907; re-en. Sec. 7039, R.C.M. 1921; Cal. Civ. C. Sec. 1340; Based on Field Civ. C. Sec. 602; re-en. Sec. 7039, R.C.M. 1935; R.C.M. 1947, 91-224.

72-11-314. Conditional disposition defined. A conditional disposition is one which depends upon the occurrence of some uncertain event by which it is either to take effect or be defeated.

History: En. Sec. 502, p. 360, L. 1877; re-en. Sec. 502, 2nd Div. Rev. Stat. 1879; re-en. Sec. 502, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1798, Civ. C. 1895; re-en. Sec. 4791, Rev. C. 1907; re-en. Sec. 7044, R.C.M. 1921; Cal. Civ. C. Sec. 1345; Field Civ. C. Sec. 607; re-en. Sec. 7044, R.C.M. 1935; R.C.M. 1947, 91-229.

72-11-315. Condition precedent defined. A condition precedent in a will is one which is required to be fulfilled before a particular disposition takes effect.

History: En. Sec. 503, p. 360, L. 1877; re-en. Sec. 503, 2nd Div. Rev. Stat. 1879; re-en. Sec. 503, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1799, Civ. C. 1895; re-en. Sec. 4792, Rev. C. 1907; re-en. Sec. 7045, R.C.M. 1921; Cal. Civ. C. Sec. 1346; Field Civ. C. Sec. 608; re-en. Sec. 7045, R.C.M. 1935; R.C.M. 1947, 91-230.

72-11-316. Effect of condition precedent. Where a testamentary disposition is made upon a condition precedent, nothing vests until the condition is fulfilled, except where such fulfillment is impossible, in which case the disposition vests, unless the condition was the sole motive thereof and the impossibility was unknown to the testator or arose from an unavoidable event subsequent to the execution of the will.

History: En. Sec. 504, p. 360, L. 1877; re-en. Sec. 504, 2nd Div. Rev. Stat. 1879; re-en. Sec. 504, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1800, Civ. C. 1895; re-en. Sec. 4793, Rev. C. 1907; re-en. Sec. 7046, R.C.M. 1921; Cal. Civ. C. Sec. 1347; Field Civ. C. Sec. 609; re-en. Sec. 7046, R.C.M. 1935; R.C.M. 1947, 91-231.

72-11-317. Condition precedent — when considered performed. A condition precedent in a will is to be deemed performed when the testator's intention has been substantially though not literally complied with.

History: En. Sec. 505, p. 360, L. 1877; re-en. Sec. 505, 2nd Div. Rev. Stat. 1879; re-en. Sec. 505, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1801, Civ. C. 1895; re-en. Sec. 4794, Rev. C. 1907; re-en. Sec. 7047, R.C.M. 1921; Cal. Civ. C. Sec. 1348; Field Civ. C. Sec. 610; re-en. Sec. 7047, R.C.M. 1935; R.C.M. 1947, 91-232.

72-11-318. Condition subsequent defined. A condition subsequent is where an estate or interest is so given as to vest immediately, subject only to being divested by some subsequent act or event.

History: En. Sec. 506, p. 360, L. 1877; re-en. Sec. 506, 2nd Div. Rev. Stat. 1879; re-en. Sec. 506, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1802, Civ. C. 1895; re-en. Sec. 4795, Rev. C. 1907; re-en. Sec. 7048, R.C.M. 1921; Cal. Civ. C. Sec. 1349; Field Civ. C. Sec. 611; re-en. Sec. 7048, R.C.M. 1935; R.C.M. 1947, 91-233.

72-11-319. Devise to more than one person. A devise or legacy given to more than one person vests in them as owners in common.

History: En. Sec. 507, p. 360, L. 1877; re-en. Sec. 507, 2nd Div. Rev. Stat. 1879; re-en. Sec. 507, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1803, Civ. C. 1895; re-en. Sec. 4796, Rev. C. 1907; re-en. Sec. 7049, R.C.M. 1921; Cal. Civ. C. Sec. 1350; Field Civ. C. Sec. 612; re-en. Sec. 7049, R.C.M. 1935; R.C.M. 1947, 91-234.

72-11-320. Devise to a class — who included. A testamentary disposition to a class includes every person answering the description at the testator's death; but when the possession is postponed to a future period, it includes also all persons coming within the description before the time to which possession is postponed.

History: En. Sec. 494, p. 358, L. 1877; re-en. Sec. 494, 2nd Div. Rev. Stat. 1879; re-en. Sec. 494, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1790, Civ. C. 1895; re-en. Sec. 4783, Rev. C. 1907; re-en. Sec. 7036, R.C.M. 1921; Cal. Civ. C. Sec. 1337; Field Civ. C. Sec. 599; re-en. Sec. 7036, R.C.M. 1935; R.C.M. 1947, 91-221.

72-11-321. Afterborn child included in class. A child conceived before but not born until after a testator's death or any other period when a disposition to a class vests in right or in possession takes if answering to the description of the class.

History: En. Sec. 496, p. 359, L. 1877; re-en. Sec. 496, 2nd Div. Rev. Stat. 1879; re-en. Sec. 496, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1792, Civ. C. 1895; re-en. Sec. 4785, Rev. C. 1907; re-en. Sec. 7038, R.C.M. 1921; Cal. Civ. C. Sec. 1339; Field Civ. C. Sec. 601; re-en. Sec. 7038, R.C.M. 1935; R.C.M. 1947, 91-223.

72-11-322. Realty to be converted considered personalty from time of death. When a will directs the conversion of real property into money, such property and all its proceeds must be deemed personal property from the time of the testator's death.

History: En. Sec. 495, p. 359, L. 1877; re-en. Sec. 495, 2nd Div. Rev. Stat. 1879; re-en. Sec. 495, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1791, Civ. C. 1895; re-en. Sec. 4784, Rev. C. 1907; re-en. Sec. 7037, R.C.M. 1921; Cal. Civ. C. Sec. 1338; Field Civ. C. Sec. 600; re-en. Sec. 7037, R.C.M. 1935; R.C.M. 1947, 91-222.

72-11-323 through 72-11-330 reserved.

72-11-331. When disposition cannot be divested. A testamentary disposition, when vested, cannot be divested unless upon the occurrence of the precise contingency prescribed by the testator for that purpose.

History: En. Sec. 499, p. 359, L. 1877; re-en. Sec. 499, 2nd Div. Rev. Stat. 1879; re-en. Sec. 499, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1795, Civ. C. 1895; re-en. Sec. 4788, Rev. C. 1907; re-en. Sec. 7041, R.C.M. 1921; Cal. Civ. C. Sec. 1342; Field Civ. C. Sec. 604; re-en. Sec. 7041, R.C.M. 1935; R.C.M. 1947, 91-226.

72-11-332. Interests in remainder not defeated by death of other devisee. The death of a devisee or legatee of a limited interest before the testator's death does not defeat the interests of persons in remainder who survive the testator.

History: En. Sec. 501, p. 359, L. 1877; re-en. Sec. 501, 2nd Div. Rev. Stat. 1879; re-en. Sec. 501, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1797, Civ. C. 1895; re-en. Sec. 4790, Rev. C. 1907; re-en. Sec. 7043, R.C.M. 1921; Cal. Civ. C. Sec. 1344; Field Civ. C. Sec. 606; re-en. Sec. 7043, R.C.M. 1935; R.C.M. 1947, 91-228.

72-11-333. Devise of land to include entire interest of testator. Every devise of land in any will conveys all the estate of the devisor therein which he could lawfully devise, unless it clearly appears by the will that he intended to convey a less estate.

History: En. Sec. 2, p. 555, Cod. Stat. 1871; re-en. Sec. 471, p. 355, L. 1877; re-en. Sec. 471, 2nd Div. Rev. Stat. 1879; re-en. Sec. 471, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1756, Civ. C. 1895; re-en. Sec. 4759, Rev. C. 1907; re-en. Sec. 7013, R.C.M. 1921; Cal. Civ. C. Sec. 1311; re-en. Sec. 7013, R.C.M. 1935; R.C.M. 1947, 91-140.

72-11-334. Repealed. Sec. 195, Ch. 575, L. 1981.

History: En. Sec. 1, p. 69, L. 1893; re-en. Sec. 1759, Civ. C. 1895; re-en. Sec. 4762, Rev. C. 1907; re-en. Sec. 7015, R.C.M. 1921; Cal. Civ. C. Sec. 1313; re-en. Sec. 7015, R.C.M. 1935; amd. Sec. 1, Ch. 93, L. 1945; R.C.M. 1947, 91-142.

CHAPTER 12

PROBATE AND ADMINISTRATION SUPPLEMENTARY PROVISIONS

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Part 1

General Provisions

72-12-101. Continuing jurisdiction over testamentary trust. Where any trust has been created by or under any will to continue after distribution, the district court shall not lose jurisdiction of the estate by final distribution but shall retain jurisdiction thereof for the purpose of the settlement of accounts under the trust as provided in chapters 20 through 30.

History: En. Sec. 2900, C. Civ. Proc. 1895; re-en. Sec. 7698, Rev. C. 1907; re-en. Sec. 10352, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1699; re-en. Sec. 10352, R.C.M. 1935; amd. Sec. 2, Ch. 24, L. 1969; R.C.M. 1947, 91-4201.

72-12-102. Compensation of testamentary trustee. On all such accountings, the court or judge shall allow the trustee or trustees the proper expenses and such compensation for services as the court or judge may deem to be just and reasonable and shall apportion such compensation among the trustees according to the services rendered by them respectively and may, in its discretion, fix a yearly compensation for the trustee or trustees, to continue as long as the court or judge may deem proper.

History: En. Sec. 2901, C. Civ. Proc. 1895; re-en. Sec. 7699, Rev. C. 1907; re-en. Sec. 10353, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1700; re-en. Sec. 10353, R.C.M. 1935; R.C.M. 1947, 91-4202.

72-12-103. Appeal from order settling account of testamentary trustee. (1) From an order settling such account appeal may be taken in the manner provided for an appeal from an order settling the account of an executor or administrator.

(2) The order of the district court, if affirmed on appeal or becoming final without appeal, shall be conclusive.

History: En. Sec. 2902, C. Civ. Proc. 1895; re-en. Sec. 7700, Rev. C. 1907; re-en. Sec. 10354, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1701; re-en. Sec. 10354, R.C.M. 1935; R.C.M. 1947, 91-4203.

72-12-104. Duty of tenant for life in legacy to deliver inventory. When specific legacies are for life only, the first legatee must sign and deliver to the second legatee, or if there is none, to the personal representative, an inventory of the property, expressing that the same is in his custody for life only and that on his decease it is to be delivered and to remain to the use and for the benefit of the second legatee or to the personal representative, as the case may be.

History: En. Secs. 509-530, pp. 360-363, L. 1877; re-en. Secs. 509-530, 2nd Div. Rev. Stat. 1879; re-en. Secs. 509-530, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1828, Civ. C. 1895; re-en. Sec. 4806, Rev. C. 1907; re-en. Sec. 7059, R.C.M. 1921; Cal. Civ. C. Sec. 1365; Field Civ. C. Sec. 622; re-en. Sec. 7059, R.C.M. 1935; R.C.M. 1947, 91-309.

Part 2

Will Contest — Procedure

72-12-201. How jury impaneled and trial had. When a jury is demanded, the district court must impanel a jury to try the case in the manner provided for impaneling juries in courts of record, and the trial must be conducted in accordance with the provisions of Title 25, chapter 7, part 2 and Rule 47, M.R.Civ.P. A trial by the court must be conducted as provided in Title 25, chapter 7, part 6; 25-9-104; and M.R.Civ.P., Rules 38(d), 39(b), and 52.

History: En. Sec. 21, p. 245, L. 1877; re-en. Sec. 21, 2nd Div. Rev. Stat. 1879; re-en. Sec. 21, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2341, C. Civ. Proc. 1895; re-en. Sec. 7398, Rev. C. 1907; re-en. Sec. 10033, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1313; re-en. Sec. 10033, R.C.M. 1935; R.C.M. 1947, 91-902.

72-12-202. Jury verdict — judgment — proofs reduced to writing. The jury after hearing the case must return a special verdict upon the issues submitted to it by the court, upon which the judgment of the court must be rendered, either admitting the will to probate or rejecting it. In either case, the proofs of the subscribing witnesses must be reduced to writing. If the will be admitted to probate, the judgment, will, and proofs must be recorded.

History: En. Sec. 22, p. 245, L. 1877; re-en. Sec. 22, 2nd Div. Rev. Stat. 1879; re-en. Sec. 22, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2342, C. Civ. Proc. 1895; re-en. Sec. 7399, Rev. C. 1907; re-en.

Sec. 10034, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1314; re-en. Sec. 10034, R.C.M. 1935; R.C.M. 1947, 91-903.

72-12-203. Testimony reduced to writing — good evidence in subsequent contest — filing. (1) The testimony of each witness, reduced to writing and signed by him, shall be good evidence in any subsequent contests concerning the validity of the will or the sufficiency of the proof thereof if the witness be dead or has permanently removed from this state.

(2) All testimony shall be filed by the clerk.

History: (1)En. Sec. 24, p. 246, L. 1877; re-en. Sec. 24, 2nd Div. Rev. Stat. 1879; re-en. Sec. 24, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2344, C. Civ. Proc. 1895; re-en. Sec. 7401, Rev. C. 1907; re-en. Sec. 10036, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1316; re-en. Sec. 10036, R.C.M. 1935; Sec. 91-905, R.C.M. 1947; (2)En. Sec. 26, p. 246, L. 1877; re-en. Sec. 26, p. 197, 2nd Div. Rev. Stat. 1879; re-en. Sec. 26, 2nd Div. Comp. Stat. 1887; amd. Sec. 26, 2nd Div. Comp. Stat. 1887; amd. Sec. 2346, C. Civ. Proc. 1895; re-en. Sec. 7403, Rev. C. 1907; re-en. Sec. 10038, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1318; re-en. Sec. 10038, R.C.M. 1935; Sec. 91-907, R.C.M. 1947; R.C.M. 1947, 91-905, 91-907(part).

72-12-204. Certificate to be attached when will found valid. If the court or judge is satisfied upon the proof taken or from the facts found by the jury that the will was duly executed and that the testator at the time of its execution was of sound and disposing mind and not acting under duress, menace, fraud, or undue influence, a certificate of the proof and the facts found, signed by the judge and attested by the seal of the court, must be attached to the will.

History: En. Sec. 25, p. 246, L. 1877; re-en. Sec. 25, 2nd Div. Rev. Stat. 1879; re-en. Sec. 25, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2345, C. Civ. Proc. 1895; re-en. Sec. 7402, Rev. C. 1907; re-en. Sec. 10037, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1317; re-en. Sec. 10037, R.C.M. 1935; R.C.M. 1947, 91-906.

72-12-205. Will and certificate to be filed. The will and a certificate of the proof thereof must be filed and recorded by the clerk, and the same when so filed and recorded shall constitute part of the record in the cause or proceeding.

History: En. Sec. 26, p. 246, L. 1877; re-en. Sec. 26, p. 197, 2nd Div. Rev. Stat. 1879; re-en. Sec. 26, 2nd Div. Comp. Stat. 1887; amd. Sec. 26, 2nd Div. Comp. Stat. 1887; amd. Sec. 2346, C. Civ. Proc. 1895; re-en. Sec. 7403, Rev. C. 1907; re-en. Sec. 10038, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1318; re-en. Sec. 10038, R.C.M. 1935; R.C.M. 1947, 91-907(part).

72-12-206. Fees and expenses — by whom paid. When the validity or probate of a will is contested through court action, the fees and expenses must be paid by the party contesting the validity or probate of the will, if the will in probate is confirmed. If the probate is revoked, the costs must be paid by the party who resisted the revocation or out of the property of the decedent, as the court directs.

History: En. Sec. 35, p. 248, L. 1877; re-en. Sec. 35, 2nd Div. Rev. Stat. 1879; re-en. Sec. 35, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2365, C. Civ. Proc. 1895; re-en. Sec. 7412, Rev. C. 1907; re-en. Sec. 10047, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1332; re-en. Sec. 10047, R.C.M. 1935; amd. Sec. 16, Ch. 365, L. 1974; R.C.M. 1947, 91-1106.

Part 3

Lost Wills — Procedure

72-12-301. Lost will — certificate of contents — letters to issue — testimony to be filed. (1) When a lost will is established, the provisions thereof must be distinctly stated and certified by the judge, under his hand and the seal of the court.

(2) The certificate must be filed and recorded as other wills are filed and recorded, and letters testamentary or of administration with the will annexed must be issued thereon in the same manner as upon wills produced and duly proved.

(3) The testimony must be reduced to writing, signed, certified, and filed as in other cases and shall have the same effect as evidence as provided in 72-12-203.

History: **En. Sec. 39, p. 249, L. 1877; re-en. Sec. 39, 2nd Div. Rev. Stat. 1879; re-en. Sec. 39, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2372, C. Civ. Proc. 1895; re-en. Sec. 7416, Rev. C. 1907; re-en. Sec. 10051, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1340; re-en. Sec. 10051, R.C.M. 1935; R.C.M. 1947, 91-1203.**

72-12-302. Restraint of injurious acts when other letters issued. If, before or during the pendency of an application to prove a lost or destroyed will, letters of administration are granted on the estate of the testator or letters testamentary of any previous will of the testator are granted, the court may restrain the administrators or executors so appointed from any acts or proceedings which would be injurious to the legatees or devisees claiming under the lost or destroyed will.

History: **En. Sec. 40, p. 249, L. 1877; re-en. Sec. 40, 2nd Div. Rev. Stat. 1879; re-en. Sec. 40, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2373, C. Civ. Proc. 1895; re-en. Sec. 7417, Rev. C. 1907; re-en. Sec. 10052, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1341; re-en. Sec. 10052, R.C.M. 1935; R.C.M. 1947, 91-1204.**

Part 4

Handwriting Analysis

72-12-401. Petition for handwriting analysis. In any proceeding involving the probate, either contested or uncontested, of a will in which the signature of the testator or of any witness is an issue, any party to the proceeding may file with the court a verified petition requesting that the original will be delivered to a handwriting expert residing and having his place of business outside the state or outside the county for an examination of any of the signatures on the will.

History: **En. Sec. 1, Ch. 13, L. 1974; R.C.M. 1947, 91-813.**

72-12-402. Court to determine necessity of procedure and qualifications of expert. The court, upon notice and hearing, shall determine whether the procedure is justified by the circumstances of the case and whether the handwriting expert specified in the petition is a qualified professional handwriting expert.

History: **En. Sec. 2, Ch. 13, L. 1974; R.C.M. 1947, 91-814.**

72-12-403. Clerk to mail will to expert — notice. If the court grants the petition for delivery of the original will to a qualified handwriting expert residing and having his place of business outside the county or state, the clerk of court shall make at least two photocopies of the original will, which photocopies shall remain in the custody of the clerk of court. The clerk shall mail the original will by registered or certified mail, return receipt requested, to the handwriting expert specified in the order and shall give notice of the mailing by mailing copies of the order to each of the parties to the proceeding and to the handwriting expert.

History: **En. Sec. 3, Ch. 13, L. 1974; R.C.M. 1947, 91-815.**

72-12-404. Expert to return will to clerk. Upon completion of his analysis, the handwriting expert shall return the original will to the clerk of court by registered or certified mail, return receipt requested.

History: **En. Sec. 4, Ch. 13, L. 1974; R.C.M. 1947, 91-816.**

72-12-405. Expert to mail report to petitioner. Unless the court orders another disposition of the written report, the handwriting expert, upon completion of his analysis, shall mail his written report to the party who requested it.

History: **En. Sec. 5, Ch. 13, L. 1974; R.C.M. 1947, 91-817.**

72-12-406. Petitioner to pay all fees. All fees and expenses arising from the procedure outlined in this part, including the cost of photocopying the will, the expense of all registered or certified mailings, and the handwriting expert's fee, shall be paid by the party requesting the handwriting analysis.

History: **En. Sec. 6, Ch. 13, L. 1974; R.C.M. 1947, 91-818.**

72-12-407. Report property of petitioner unless interested party shares fees. Unless the court otherwise orders, the handwriting expert's written report shall be the sole and exclusive property of the party requesting it. However, upon demand and the payment of his pro rata share of the fees and costs of the handwriting expert, as shall be determined by the court, any interested party may obtain a certified copy of the written report.

History: **En. Sec. 7, Ch. 13, L. 1974; R.C.M. 1947, 91-819.**

Part 5

Personal Representative

72-12-501. Several persons entitled to appointment — discretion of court. When there are several persons equally entitled to the administration, the court or judge may grant letters to one or more of them.

History: **En. Sec. 57, p. 254, L. 1877; re-en. Sec. 57, 2nd Div. Rev. Stat. 1879; re-en. Sec. 57, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2432, C. Civ. Proc. 1895; re-en. Sec. 7434, Rev. C. 1907; re-en. Sec. 10070, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1367; re-en. Sec. 10070, R.C.M. 1935; R.C.M. 1947, 91-1403.**

72-12-502. Individual liability for costs. When a judgment is recovered with costs against any executor or administrator, he shall be individually liable for such costs, but they must be allowed him in his administration accounts unless it appears that the suit or proceeding in which the costs were taxed was prosecuted or defended without just cause.

History: **En. Sec. 166, p. 282, L. 1877; re-en. Sec. 166, 2nd Div. Rev. Stat. 1879; re-en. Sec. 166, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2619, C. Civ. Proc. 1895; re-en. Sec. 7541, Rev. C. 1907; re-en.**

Sec. 10190, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1509; re-en. Sec. 10190, R.C.M. 1935; R.C.M. 1947, 91-2721.

72-12-503. Unnecessary to join executors not qualified. In actions by or against executors, it is not necessary to join those as parties to whom letters were issued but who have not qualified.

History: En. Sec. 231, p. 301, L. 1877; re-en. Sec. 231, 2nd Div. Rev. Stat. 1879; re-en. Sec. 231, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2736, C. Civ. Proc. 1895; re-en. Sec. 7609, Rev. C. 1907; re-en. Sec. 10263, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1587; re-en. Sec. 10263, R.C.M. 1935; R.C.M. 1947, 91-3207.

Part 6

Third Parties Handling Estate Property — Recovery — Account

72-12-601. Action for misappropriation of estate prior to appointment — double recovery. If any person, before the granting of letters testamentary or of administration, commits theft of or alienates any of the moneys, goods, chattels, or effects of a decedent, he is charged therewith and liable to an action by the executor or administrator of the estate for double the value of the property so mishandled to be recovered for the benefit of the estate.

History: En. Sec. 129, p. 270, L. 1877; re-en. Sec. 129, 2nd Div. Rev. Stat. 1879; re-en. Sec. 129, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2570, C. Civ. Proc. 1895; re-en. Sec. 7504, Rev. C. 1907; re-en. Sec. 10140, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1458; re-en. Sec. 10140, R.C.M. 1935; amd. Sec. 66, Ch. 359, L. 1977; R.C.M. 1947, 91-2301.

72-12-602. Citation to person suspected of misappropriation of estate — expenses if innocent. If any executor or administrator or any person interested in the estate of a decedent complains to the court or judge, on oath, that any person is suspected of having concealed, smuggled, conveyed away, disposed of, or committed theft of any moneys, goods, or chattels of the decedent or has in his possession or knowledge any deeds, conveyances, bonds, contracts, or other writings which contain evidences of or tend to disclose the right, title, interest, or claim of the decedent to any real or personal estate, any claim or demand, or any lost will, the court or judge may cite such person to appear before the court and may examine him on oath upon the matter of the complaint. If such person is not in the county where the decedent dies or where letters have been granted, he may be cited and examined either before the district court or judge of the county where the decedent dies or where letters have been granted. But if he appears and is found innocent, his necessary expenses must be allowed him out of the estate.

History: En. Sec. 130, p. 270, L. 1877; re-en. Sec. 130, 2nd Div. Rev. Stat. 1879; re-en. Sec. 130, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2571, C. Civ. Proc. 1895; re-en. Sec. 7505, Rev. C. 1907; re-en. Sec. 10141, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1459; re-en. Sec. 10141, R.C.M. 1935; amd. Sec. 67, Ch. 359, L. 1977; R.C.M. 1947, 91-2302.

72-12-603. Refusal to obey citation or order — civil contempt. If the person so cited refuses to appear and submit to an examination or to answer such interrogatories as may be put to him touching the matters of the complaint, the court or judge may, by warrant for that purpose, commit him to the county jail, there to remain in close custody until he submits to the order of the court or is discharged according to law. If upon examination it appears that he has concealed, smuggled, conveyed away, disposed of, or committed theft of any moneys, goods, or chattels of the decedent or that he has in his possession or knowledge any deeds, conveyances, bonds, contracts, or other writings containing evidence of or tending to disclose the right, title, interest, or claim of the decedent to any real or personal estate, claim, or demand or any lost will of the decedent, the court or judge may make an order requiring such person to disclose his knowledge thereof to the executor or administrator and may commit him to the county jail, there to remain until the order is complied with or he is discharged according to law; and all such interrogatories and answers must be in writing, signed by the party examined, and filed in the court.

History: En. Sec. 131, p. 271, L. 1877; re-en. Sec. 131, 2nd Div. Rev. Stat. 1879; re-en. Sec. 131, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2572, C. Civ. Proc. 1895; re-en. Sec. 7506, Rev. C. 1907; re-en. Sec. 10142, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1460; re-en. Sec. 10142, R.C.M. 1935; amd. Sec. 68, Ch. 359, L. 1977; R.C.M. 1947, 91-2303(part).

72-12-604. Order for disclosure as evidence in action for double recovery — other witnesses. The order for such disclosure made upon such examination shall be prima facie evidence of the right of the executor or administrator to such property in any action brought for the recovery thereof, and any judgment recovered therein must be for double the value of the property as assessed by the court or jury or for the return of the property and damages in addition thereto equal to the value of such property. In addition to the examination of the party, witnesses may be produced and examined on either side.

History: En. Sec. 131, p. 271, L. 1877; re-en. Sec. 131, 2nd Div. Rev. Stat. 1879; re-en. Sec. 131, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2572, C. Civ. Proc. 1895; re-en. Sec. 7506, Rev. C. 1907; re-en. Sec. 10142, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1460; re-en. Sec. 10142, R.C.M. 1935; amd. Sec. 68, Ch. 359, L. 1977; R.C.M. 1947, 91-2303(part).

72-12-605. Account of third person entrusted with estate assets. (1) The court or judge, upon the complaint on oath of any executor or administrator, may cite any person who has been entrusted with any part of the estate of the decedent to appear before such court or judge and require him to render a full account on oath of any moneys, goods, chattels, bonds, accounts, or other property or papers belonging to the estate which have come to his possession in trust for the executor or administrator and of his proceedings thereon.

(2) If the person so cited refuses to appear and render such account, the court or judge may proceed against him as provided in 72-12-603 and 72-12-604.

History: En. Sec. 132, p. 271, L. 1877; re-en. Sec. 132, 2nd Div. Rev. Stat. 1879; re-en. Sec. 132, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2573, C. Civ. Proc. 1895; re-en. Sec. 7507, Rev. C. 1907; re-en. Sec. 10143, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1461; re-en. Sec. 10143, R.C.M. 1935; R.C.M. 1947, 91-2304.

Part 7

Powers and Duties of Surviving Partner

72-12-701. Right of surviving partner to settle business — inventory and appraisal. When a partnership exists between the decedent at the time of his death and any other person, the surviving partner has the right to continue in possession of the partnership and to settle its business, but the interest of the decedent in the partnership must be included in the inventory and be appraised as other property.

History: En. Sec. 229, p. 301, L. 1877; re-en. Sec. 229, 2nd Div. Rev. Stat. 1879; re-en. Sec. 229, 2nd Div. Comp. Stat. 1887; amd. Sec. 1, p. 146, L. 1889; amd. Sec. 2734, C. Civ. Proc. 1895; re-en. Sec. 7607, Rev. C. 1907; re-en. Sec. 10261, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1585; re-en. Sec. 10261, R.C.M. 1935; R.C.M. 1947, 91-3205(part).

72-12-702. Bond of surviving partner. The surviving partner must give a bond with sufficient sureties in favor of the executor or administrator, in a sum at least equal to the value of the interest of the deceased partner in the property of the partnership. The amount of said bond must be fixed and the bond approved by the judge. In case he fails to give such bond, the court or judge may compel its execution by attachment or other proper order.

History: En. Sec. 229, p. 301, L. 1877; re-en. Sec. 229, 2nd Div. Rev. Stat. 1879; re-en. Sec. 229, 2nd Div. Comp. Stat. 1887; amd. Sec. 1, p. 146, L. 1889; amd. Sec. 2734, C. Civ. Proc. 1895; re-en. Sec. 7607, Rev. C. 1907; re-en. Sec. 10261, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1585; re-en. Sec. 10261, R.C.M. 1935; R.C.M. 1947, 91-3205(part).

72-12-703. Accounts of surviving partner. (1) The surviving partner must settle the affairs of the partnership without delay and account with the executor or administrator and pay over such balances as may from time to time be payable to him, in right of the decedent.

(2) Upon the application of the executor or administrator, the court or judge may, whenever it appears necessary, order the surviving partner to render an account and in case of neglect or refusal may, after notice, compel it by attachment; and the executor or administrator may maintain against him any action which the decedent could have maintained.

History: En. Sec. 229, p. 301, L. 1877; re-en. Sec. 229, 2nd Div. Rev. Stat. 1879; re-en. Sec. 229, 2nd Div. Comp. Stat. 1887; amd. Sec. 1, p. 146, L. 1889; amd. Sec. 2734, C. Civ. Proc. 1895; re-en. Sec. 7607, Rev. C. 1907; re-en. Sec. 10261, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1585; re-en. Sec. 10261, R.C.M. 1935; R.C.M. 1947, 91-3205(part).

72-12-704. Surviving partner as trustee. The surviving partner is a trustee of the estate or interest of the deceased partner in the property of the partnership for every purpose, and the court or judge may require the surviving partner to account at any time.

History: En. Sec. 229, p. 301, L. 1877; re-en. Sec. 229, 2nd Div. Rev. Stat. 1879; re-en. Sec. 229, 2nd Div. Comp. Stat. 1887; amd. Sec. 1, p. 146, L. 1889; amd. Sec. 2734, C. Civ. Proc. 1895; re-en. Sec. 7607, Rev. C. 1907; re-en. Sec. 10261, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1585; re-en. Sec. 10261, R.C.M. 1935; R.C.M. 1947, 91-3205(part).

Part 8

Claims Against Estate

72-12-801. Personal representative's claim — how presented. Any judge of the district court may present a claim against the estate of a decedent for allowance to the personal representative thereof, and in case of its rejection the personal representative has the same right to petition or sue in a proper court for its recovery as other persons have when their claims against an estate are rejected.

History: En. Sec. 152, p. 277, L. 1877; re-en. Sec. 152, 2nd Div. Rev. Stat. 1879; re-en. Sec. 152, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2605, C. Civ. Proc. 1895; re-en. Sec. 7527, Rev. C. 1907; re-en. Sec. 10175, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1495; re-en. Sec. 10175, R.C.M. 1935; amd. Sec. 9, Ch. 263, L. 1975; R.C.M. 1947, 91-2706.

72-12-802. Time limitations — effect of vacancy in administration. The time during which there is a vacancy in the administration is not included in any limitations prescribed in this title.

History: En. Sec. 158, p. 279, L. 1877; re-en. Sec. 158, 2nd Div. Rev. Stat. 1879; re-en. Sec. 158, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2611, C. Civ. Proc. 1895; re-en. Sec. 7533, Rev. C. 1907; re-en. Sec. 10182, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1501; re-en. Sec. 10182, R.C.M. 1935; R.C.M. 1947, 91-2713; amd. Sec. 15, Ch. 6, L. 1979.

72-12-803. Payment of debt to stop further accrual of interest. If there be any debt of the decedent bearing interest, whether presented or not, the personal representative may pay the amount then accumulated and unpaid, or any part thereof, at any time when there are sufficient funds properly applicable thereto, whether said claim be then due or not; and interest shall thereupon cease to accrue upon the amount so paid.

History: En. Sec. 170, p. 283, L. 1877; re-en. Sec. 170, 2nd Div. Rev. Stat. 1879; re-en. Sec. 170, 2nd Div. Comp. Stat. 1887; amd. Sec. 2623, C. Civ. Proc. 1895; re-en. Sec. 7545, Rev. C. 1907; re-en. Sec. 10194, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1513; re-en. Sec. 10194, R.C.M. 1935; amd. Sec. 10, Ch. 263, L. 1975; R.C.M. 1947, 91-2725.

Part 9

Special Provisions Relating to Distribution

72-12-901. Testamentary gift or discharge of debt to be treated as specific bequest. The discharge or bequest in a will of any debt or demand of the testator against the executor named or any other person is not valid against the creditors of the decedent but is a specific bequest of the debt or demand. It must be included in the inventory and, if necessary, applied in the payment of the debts. If not necessary for that purpose, it must be paid in the same manner and proportion as other specific legacies.

History: En. Sec. 123, p. 268, L. 1877; re-en. Sec. 123, 2nd Div. Rev. Stat. 1879; re-en. Sec. 123, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2555, C. Civ. Proc. 1895; re-en. Sec. 7498, Rev. C. 1907; re-en. Sec. 10134, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1448; re-en. Sec. 10134, R.C.M. 1935; R.C.M. 1947, 91-2206.

Part 10

Closing Estates — Accounting

72-12-1001. Executor or administrator chargeable in account with whole estate. Every executor and administrator is chargeable in his account with the whole of the estate of the decedent which may come into his possession at the value of the appraisement contained in the inventory, except as provided in the following sections, and with all the interest, profit, and income of the estate.

History: En. Sec. 248, p. 305, L. 1877; re-en. Sec. 248, 2nd Div. Rev. Stat. 1879; re-en. Sec. 248, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2771, C. Civ. Proc. 1895; re-en. Sec. 7628, Rev. C. 1907; re-en. Sec. 10282, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1613; re-en. Sec. 10282, R.C.M. 1935; R.C.M. 1947, 91-3402.

72-12-1002. Executor or administrator not to profit or lose from increase or decrease of estate — account for sales. (1) He shall not make profit by the increase or suffer loss by the decrease or destruction without his fault of any part of the estate.

(2) He must account for the excess when he sells any part of the estate for more than the appraisement, and if any is sold for less than the appraisement, he is not responsible for the loss, if the sale has been justly made.

History: En. Sec. 249, p. 305, L. 1877; re-en. Sec. 249, 2nd Div. Rev. Stat. 1879; re-en. Sec. 249, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2772, C. Civ. Proc. 1895; re-en. Sec. 7629, Rev. C. 1907; re-en. Sec. 10283, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1614; re-en. Sec. 10283, R.C.M. 1935; R.C.M. 1947, 91-3403.

72-12-1003. Nonaccountability for uncollected debts without fault. No executor or administrator is accountable for any debts due the decedent if it appears that they remain uncollected without his fault.

History: En. Sec. 250, p. 305, L. 1877; re-en. Sec. 250, 2nd Div. Rev. Stat. 1879; re-en. Sec. 250, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2773, C. Civ. Proc. 1895; re-en. Sec. 7630, Rev. C. 1907; re-en. Sec. 10284, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1615; re-en. Sec. 10284, R.C.M. 1935; R.C.M. 1947, 91-3404.

72-12-1004. Payment of claim for less than nominal value — account. If the personal representative pays any claim for less than its nominal value, he is entitled to charge in his account only the amount he actually paid.

History: En. Sec. 252, p. 305, L. 1877; re-en. Sec. 252, 2nd Div. Rev. Stat. 1879; re-en. Sec. 252, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2775, C. Civ. Proc. 1895; re-en. Sec. 7632, Rev. C. 1907; re-en. Sec. 10286, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1617; re-en. Sec. 10286, R.C.M. 1935; amd. Sec. 13, Ch. 365, L. 1974; R.C.M. 1947, 91-3406.

CHAPTER 13

PERSONS UNDER DISABILITY SUPPLEMENTARY PROVISIONS

Part 1 — Actions On Guardian's Bond—Limitations

Section
72-13-101. Bond to be filed and preserved — action for breach.
72-13-102. Limitation of action on bond.
72-13-103. Limitation of action for recovery of property sold by guardian.

Part 2 — Joint Guardians

72-13-201. Joint guardianship authorized.
72-13-202. Allowance of account of joint guardians.
72-13-203. Death of a joint guardian.

Part 3 — Nonresidents Under Disability

72-13-301. Guardian of property of nonresident — appointment.

Part 1

Actions On Guardian's Bond — Limitations

72-13-101. Bond to be filed and preserved — action for breach. Every bond given by a guardian must be filed and preserved in the office of the clerk of the district court and, in case of a breach of condition thereof, may be prosecuted for the use and benefit of the ward or of any person interested in the estate.

History: En. Sec. 403, p. 344, L. 1877; re-en. Sec. 403, 2nd Div. Rev. Stat. 1879; re-en. Sec. 403, 2nd Div. Comp. Stat. 1887; re-en. Sec. 3054, C. Civ. Proc. 1895; re-en. Sec. 7811, Rev. C. 1907; re-en. Sec. 10459, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1804; re-en. Sec. 10459, R.C.M. 1935; R.C.M. 1947, 91-5206.

72-13-102. Limitation of action on bond. No action can be maintained against the sureties on any bond given by a guardian unless it be commenced within 3 years from the discharge or removal of the guardian; but if, at the time of such discharge, the person entitled to bring such action is under any legal disability to sue, the action may be commenced at any time within 3 years after such disability is removed.

History: En. Sec. 404, p. 344, L. 1877; re-en. Sec. 404, 2nd Div. Rev. Stat. 1879; re-en. Sec. 404, 2nd Div. Comp. Stat. 1887; re-en. Sec. 3055, C. Civ. Proc. 1895; re-en. Sec. 7812, Rev. C. 1907; re-en. Sec. 10460, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1805; re-en. Sec. 10460, R.C.M. 1935; R.C.M. 1947, 91-5207.

72-13-103. Limitation of action for recovery of property sold by guardian. No action for the recovery of any estate sold by a guardian can be maintained by the ward or by any person claiming under him unless it is commenced within 3 years next after the termination of the guardianship or, when a legal disability to sue exists by reason of minority or otherwise at the time when the cause of action accrues, within 3 years next after the removal thereof.

History: En. Sec. 405, p. 344, L. 1877; re-en. Sec. 405, 2nd Div. Rev. Stat. 1879; re-en. Sec. 405, 2nd Div. Comp. Stat. 1887; re-en. Sec. 3056, C. Civ. Proc. 1895; re-en. Sec. 7813, Rev. C. 1907; re-en. Sec. 10461, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1806; re-en. Sec. 10461, R.C.M. 1935; R.C.M. 1947, 91-5208.

Part 2

Joint Guardians

72-13-201. Joint guardianship authorized. Whenever necessary, the court or judge may appoint more than one guardian of any person subject to guardianship, who must give bond and be governed and liable in all respects as a sole guardian.

History: En. Sec. 406, p. 344, L. 1877; re-en. Sec. 406, 2nd Div. Rev. Stat. 1879; re-en. Sec. 406, 2nd Div. Comp. Stat. 1887; amd. Sec. 3057, C. Civ. Proc. 1895; re-en. Sec. 7814, Rev. C. 1907; re-en.

Sec. 10462, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1807; re-en. Sec. 10462, R.C.M. 1935; R.C.M. 1947, 91-5209.

72-13-202. Allowance of account of joint guardians. When an account is rendered by two or more joint guardians, the court or judge may, in its or his discretion, allow the same upon the oath of any of them.

History: En. Sec. 374, p. 337, L. 1877; re-en. Sec. 374, 2nd Div. Rev. Stat. 1879; re-en. Sec. 374, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2987, C. Civ. Proc. 1895; re-en. Sec. 7776, Rev. C. 1907; re-en. Sec. 10424, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1775; re-en. Sec. 10424, R.C.M. 1935; R.C.M. 1947, 91-4908.

72-13-203. Death of a joint guardian. On the death of one of two or more joint guardians, the power continues to the survivor until a further appointment is made by the court.

History: En. Sec. 425, p. 348, L. 1877; re-en. Sec. 425, 2nd Div. Rev. Stat. 1879; re-en. Sec. 425, 2nd Div. Comp. Stat. 1887; re-en. Sec. 346, Civ. C. 1895; re-en. Sec. 3789, Rev. C. 1907; re-en. Sec. 5884, R.C.M. 1921; Cal. Civ. C. Sec. 252; Field Civ. C. Sec. 133; re-en. Sec. 5884, R.C.M. 1935; R.C.M. 1947, 91-4521.

Part 3

Nonresidents Under Disability

72-13-301. Guardian of property of nonresident — appointment. A guardian of the property within this state of a person not residing therein, who is a minor or of unsound mind, may be appointed by the district court.

History: En. Sec. 417, p. 346, L. 1877; re-en. Sec. 417, 2nd Div. Rev. Stat. 1879; re-en. Sec. 417, 2nd Div. Comp. Stat. 1887; re-en. Sec. 338, Civ. C. 1895; re-en. Sec. 3781, Rev. C. 1907; re-en. Sec. 5876, R.C.M. 1921; Field Civ. C. Sec. 125; re-en. Sec. 5876, R.C.M. 1935; R.C.M. 1947, 91-4509.

CHAPTER 14

ESCHEATED ESTATES

Part 1 — General Provisions

Section

72-14-101. Short title.
72-14-102. When title to escheated property vests in state.
72-14-103. Duty of attorney general — employment of special assistant.

Part 2 — Procedure for State Acquisition of Escheatable Property

72-14-201. Discovery to determine existence of escheatable property.
72-14-202. Public administrator to deposit moneys with county treasurer — disbursement for administration — accounts.
72-14-203. Investment of deposited moneys pending proceedings.
72-14-204. Order directing sale of property upon final settlement of estate.
72-14-205. Unsold intangible personal property — how disposed of — auction sale.
72-14-206. Unsold real property — how disposed of — auction sale.
72-14-207. Unsold tangible personal property — how disposed of — auction sale.
72-14-208. Sales by department of revenue and county treasurer — how conducted.
72-14-209. Deposit of all sums escheated — agency fund.

72-14-210. Agency fund moneys to be held in trust — deposit in public school subfund.

Part 3 — Actions for Claim of Escheated Property

72-14-301. Filing of action — service — applicability of other procedural provisions.
72-14-302. Statute of limitations.
72-14-303. Inheritance tax — determination — objections.

Part 4 — Fiduciary Deposit in Certain Cases Claims—Escheat

72-14-401. Fiduciary deposit of money when interested person under disability or similar circumstances — receipt as voucher.
72-14-402. Claim for money deposited in county treasury.
72-14-403. Deposit of unclaimed property in state treasury — escheat.

Part 1

General Provisions

72-14-101. Short title. Parts 1 through 3 of this chapter are to be known as the "Escheated Estates Act".

History: En. Sec. 1, Ch. 184, L. 1943; R.C.M. 1947, 91-501; amd. Sec. 16, Ch. 6, L. 1979; amd. Sec. 1, Ch. 628, L. 1979.

72-14-102. When title to escheated property vests in state. Whenever the title to any property, either real or personal or mixed, fails for any reason, including want of heirs or next of kin, such title vests in the state of Montana immediately upon the death of the owner without an inquest or other similar proceeding and there is no presumption that such owner died leaving heirs or next of kin.

History: En. Sec. 2, Ch. 184, L. 1943; amd. Sec. 1, Ch. 170, L. 1953; amd. Sec. 110, Ch. 147, L. 1963; amd. Sec. 1, Ch. 156, L. 1971; amd. Sec. 67, Ch. 391, L. 1973; R.C.M. 1947, 91-502(part); amd. Sec. 17, Ch. 6, L. 1979; amd. Sec. 2, Ch. 628, L. 1979.

72-14-103. Duty of attorney general — employment of special assistant. (1) The attorney general of the state of Montana shall be the legal adviser in connection with all escheated property matters, and it is the duty of the attorney general to institute investigations and conduct inquiries for the discovery of all real and personal property which may have escheated or should escheat to the state and for that purpose has the power to cite any and all persons before any of the district courts of this state to answer investigations and render accounts concerning said property, real or personal, and to examine all books and papers of any and all corporations. When any real or personal property is discovered which should escheat to the state, the attorney general must institute suit in the district court of the county where said property shall be situated for the recovery and to escheat the same to the state and shall take all steps necessary to secure such escheat. The proceedings in all such actions shall be those provided for in parts 1 through 3 of this chapter.

(2) For this purpose the attorney general is authorized and empowered to employ a special assistant and incur necessary expenses subject to appropriation limitations.

History: Ap. p. Sec. 463, Pol. C. 1895; re-en. Sec. 200, Rev. C. 1907; re-en. Sec. 206, R.C.M. 1921; Cal. Pol. C. Sec. 474; re-en. Sec. 206, R.C.M. 1935; Sec. 82-409, R.C.M. 1947; Ap. p. Sec. 12, Ch. 184, L. 1943; amd. Sec. 1, Ch. 193, L. 1953; amd. Sec. 115, Ch. 147, L. 1963; amd. Sec. 1, Ch. 377, L. 1971; Sec. 91-512, R.C.M. 1947; R.C.M. 1947, 82-409, 91-512.

Part 2

Procedure for State Acquisition of Escheatable Property

72-14-201. Discovery to determine existence of escheatable property. In order to ascertain if any person has knowledge of or is in possession of any escheatable property, it shall be lawful for the attorney general or his assistant to obtain discovery on motion in the district court requiring any such person or persons to divulge any information they may have concerning the possession or location of any property subject to escheat or any other information pertinent to the recovery of such property by the state of Montana or which information may lead to the discovery of such escheatable property.

History: En. Sec. 2, Ch. 184, L. 1943; amd. Sec. 1, Ch. 170, L. 1953; amd. Sec. 110, Ch. 147, L. 1963; amd. Sec. 1, Ch. 156, L. 1971; amd. Sec. 67, Ch. 391, L. 1973; R.C.M. 1947, 91-502(part).

72-14-202. Public administrator to deposit moneys with county treasurer — disbursement for administration — accounts. (1) It is the duty of every public administrator, as soon as he receives the same, to deposit with the county treasurer of the county in which probate proceedings are pending all moneys of the estate, and such moneys may be drawn upon the order of the public administrator, countersigned by a district judge, when required for the purposes of administration.

(2) It is the duty of the county treasurer to receive and safely keep all such moneys and pay them out upon the order of the public administrator, when countersigned by a district judge and not otherwise, and to keep an account with such estate of all moneys received and paid to him; and for the safekeeping and payment of all such moneys, as herein provided, the treasurer and his sureties are liable upon his official bond.

History: En. Sec. 3, Ch. 184, L. 1943; R.C.M. 1947, 91-503.

72-14-203. Investment of deposited moneys pending proceedings. The moneys thus deposited may, upon order of the court or judge, be invested pending the proceedings in securities of the United States or of this state, when such investment is for the best interests of the estate.

History: En. Sec. 4, Ch. 184, L. 1943; amd. Sec. 111, Ch. 147, L. 1963; amd. Sec. 2, Ch. 156, L. 1971; amd. Sec. 68, Ch. 391, L. 1973; R.C.M. 1947, 91-504(part).

72-14-204. Order directing sale of property upon final settlement of estate. At the final settlement of any estate, if there be no heirs or other claimants thereof, the district judge shall make an order directing the public administrator to sell all property belonging to the estate and pay the proceeds to the county treasurer, who shall keep an account with such estate of all moneys received and paid to him, and the county treasurer shall forthwith remit all of said money to the department of revenue with a statement as to the estates to which the money belongs. The department shall immediately deliver such money to the state treasurer who shall thereupon deposit such money so received by him in the agency fund of the state of Montana.

History: En. Sec. 4, Ch. 184, L. 1943; amd. Sec. 111, Ch. 147, L. 1963; amd. Sec. 2, Ch. 156, L. 1971; amd. Sec. 68, Ch. 391, L. 1973; R.C.M. 1947, 91-504(part).

72-14-205. Unsold intangible personal property — how disposed of — auction sale. (1) If the intangible personal property in an escheated estate was not sold by the personal representative at the final settlement of the estate as by law provided, then it shall be the duty of the personal representative to deliver all of such property to the department of revenue with a statement setting forth the name of the estate to which it belongs, and the department must within 1 year of the receipt of such property cause the same to be sold to the highest bidder at a public auction sale at the department's office in Helena, Montana.

(2) The department shall give notice of such sale by publication in a newspaper published in the city of Helena, Montana, once a week for 2 successive weeks making in all two publications, the last publication to be at least 20 days prior to the date of such sale. Such notice shall give the time and place of such sale and shall contain a list and description of the stocks, bonds, securities, or other intangible personal property to be sold.

(3) All of the expenses of such sale shall be deducted from the proceeds thereof by the department, and the balance of such proceeds shall be delivered by the department to the state treasurer for deposit in the agency fund of the state of Montana.

History: En. Sec. 5, Ch. 184, L. 1943; amd. Sec. 112, Ch. 147, L. 1963; amd. Sec. 3, Ch. 156, L. 1971; amd. Sec. 69, Ch. 391, L. 1973; R.C.M. 1947, 91-505; amd. Sec. 3, Ch. 628, L. 1979.

72-14-206. Unsold real property — how disposed of — auction sale. (1) If the real property was not sold by the personal representative at the final settlement of the estate as by law provided, then it shall be the duty of the personal representative to make and execute to the state of Montana a deed and to deliver the same to the county clerk and recorder of the county wherein such real property is situated, and it shall then become the duty of the county clerk and recorder to file and record said deed, without charge, and after being so recorded the county clerk and recorder shall mail the deed to the department of revenue, which shall make a record thereof and deliver the deed to the board of land commissioners.

(2) Within 1 year after the receipt of such recorded deed, the board shall cause such property to be sold to the highest bidder at public auction sale to be held at the courthouse in the county where such real property or any part thereof is situated.

(3) The board shall give notice of such sale by publication in a newspaper published in the county wherein such real estate or any part thereof is situated once a week for 2 weeks, making in all two publications, the last publication to be at least 20 days prior to the date of such sale. Such notice shall give the time and place of such sale and contain a description of the real property to be sold.

(4) All expenses of such sale shall be deducted by the board from the proceeds thereof, and the balance of such proceeds shall be turned over to the state treasurer who shall deposit the same in the agency fund of the state of Montana. The board shall provide the department with a statement indicating the sale price, expenses, and net proceeds resulting from each such sale.

History: En. Sec. 6, Ch. 184, L. 1943; amd. Sec. 113, Ch. 147, L. 1963; amd. Sec. 4, Ch. 156, L. 1971; amd. Sec. 70, Ch. 391, L. 1973; R.C.M. 1947, 91-506; amd. Sec. 4, Ch. 628, L. 1979.

72-14-207. Unsold tangible personal property — how disposed of — auction sale. (1) If the tangible personal property in an escheated estate was not sold by the personal representative at the final settlement of the estate as provided by law, it is the duty of the personal representative to deliver such property to the county treasurer. The county treasurer must, within 1 year of the receipt of such property, cause it to be sold to the highest bidder at a public auction sale at the county seat of the county of administration of the estate.

(2) The county treasurer shall give notice of such sale by publication in a newspaper published in the county of administration once a week for 2 successive weeks making in all two publications, the last publication to be at least 20 days prior to the date of such sale. The notice shall give the time and place of such sale and contain a description of the property to be sold.

(3) All expenses of such sale shall be deducted from the proceeds thereof by the county treasurer, and the balance of such proceeds shall be delivered by the county treasurer to the department of revenue for deposit in the agency fund of the state of Montana.

History: En. Sec. 7, Ch. 184, L. 1943; amd. Sec. 114, Ch. 147, L. 1963; amd. Sec. 5, Ch. 156, L. 1971; amd. Sec. 71, Ch. 391, L. 1973; R.C.M. 1947, 91-507; amd. Sec. 5, Ch. 628, L. 1979.

72-14-208. Sales by department of revenue and county treasurer — how conducted. All hereinbefore mentioned sales by the department of revenue or county treasurer must be for cash at public auction and shall be made to the highest bidder. However, the seller may reject all bids which are disproportionate to the value of the property being sold.

History: En. Sec. 8, Ch. 184, L. 1943; amd. Sec. 6, Ch. 156, L. 1971; amd. Sec. 72, Ch. 391, L. 1973; R.C.M. 1947, 91-508; amd. Sec. 6, Ch. 628, L. 1979.

72-14-209. Deposit of all sums escheated — agency fund. All sums escheated under the provisions of parts 1 through 3 of this chapter shall be delivered by the department of revenue to the state treasurer and deposited by the treasurer in the agency fund.

History: En. Sec. 2, Ch. 184, L. 1943; amd. Sec. 1, Ch. 170, L. 1953; amd. Sec. 110, Ch. 147, L. 1963; amd. Sec. 1, Ch. 156, L. 1971; amd. Sec. 67, Ch. 391, L. 1973; R.C.M. 1947, 91-502(part); amd. Sec. 7, Ch. 628, L. 1979.

72-14-210. Agency fund moneys to be held in trust — deposit in public school subfund. Moneys and properties placed in the agency fund shall be held in trust for a period of 5 years prior to deposit in the public school subfund in the trust and legacy fund by the state treasurer; such trust being for the benefit of persons claiming property pursuant to part 3 of this chapter. Such a claim may be brought for an amount equal to the full amount or value of the property escheated minus the costs and expenses incident to reducing the same to the possession of the state.

History: En. Sec. 2, Ch. 184, L. 1943; amd. Sec. 1, Ch. 170, L. 1953; amd. Sec. 110, Ch. 147, L. 1963; amd. Sec. 1, Ch. 156, L. 1971; amd. Sec. 67, Ch. 391, L. 1973; R.C.M. 1947, 91-502(part); amd. Sec. 8, Ch. 628, L. 1979.

Part 3

Actions for Claim of Escheated Property

72-14-301. Filing of action — service — applicability of other procedural provisions. (1) Any persons claiming property in the hands of the state treasurer must bring an action in the district court of Lewis and Clark County, Montana, against the state treasurer.

(2) In such action one copy of the complaint and summons must be served upon the state treasurer, one must be served upon the attorney general, and one must be served upon the director of revenue.

(3) Such action shall be prosecuted subject to all of the provisions of the statutes of this state in relation to civil actions generally, including the right of either party to appeal to the supreme court of the state of Montana.

History: En. Sec. 9, Ch. 184, L. 1943; amd. Sec. 1, Ch. 79, L. 1945; amd. Sec. 73, Ch. 391, L. 1973; R.C.M. 1947, 91-509(part).

72-14-302. Statute of limitations. Such action must be brought within 5 years from the date on which the money or property is received by the state treasurer, saving, however, to infants and persons of unsound mind or citizens of the United States beyond the limits of the United States, the right to commence their action at any time within the time limited or 5 years after their respective disabilities cease.

History: En. Sec. 9, Ch. 184, L. 1943; amd. Sec. 1, Ch. 79, L. 1945; amd. Sec. 73, Ch. 391, L. 1973; R.C.M. 1947, 91-509(part); amd. Sec. 9, Ch. 628, L. 1979.

72-14-303. Inheritance tax — determination — objections. The inheritance tax on estates subject to parts 1 through 3 of this chapter is to be determined and objections filed in accordance with Title 72, chapter 16, part 4. The determination of the department of revenue shall fix the amount of inheritance tax, if any, which is due from a person claiming under this part to the state of Montana upon the money or property claimed, and none of the money or property shall be turned over to the claimant until such inheritance tax is paid. The department of revenue shall issue its interlocutory certificate showing the amount of said inheritance tax due, if any, and shall have the right to file objections and be heard upon the final determination of said tax.

History: En. Sec. 9, Ch. 184, L. 1943; amd. Sec. 1, Ch. 79, L. 1945; amd. Sec. 73, Ch. 391, L. 1973; R.C.M. 1947, 91-509(part); amd. Sec. 10, Ch. 628, L. 1979.

Part 4

Fiduciary Deposit in Certain Cases
Claims — Escheat

72-14-401. Fiduciary deposit of money when interested person under disability or similar circumstances — receipt as voucher.

When property in the hands of a personal representative, trustee, or other fiduciary is assigned or distributed to any heir, legatee, devisee, creditor, beneficiary, or person interested in any estate or trust who has no agent in this state or who cannot be found or who refuses to accept the same or to give a proper voucher therefor or to a minor or incompetent person who has no legal guardian to receive the same or person authorized to receipt therefor and the same or any part thereof consists of money, the personal representative, trustee, or other fiduciary may deposit the money in a special fund in the name of the heir, legatee, devisee, creditor, beneficiary, or person interested with the county treasurer of the county in which the proceedings are pending or in which such property is located, who shall give a receipt for the same and be liable upon his official bond therefor; and said receipt shall be deemed and received by the court or judge thereof as a voucher in favor of the personal representative, trustee, or other fiduciary with the same force and effect as if executed by such heir, legatee, devisee, creditor, beneficiary, or person interested.

History: En. Sec. 1, Ch. 128, L. 1947; R.C.M. 1947, 91-524; amd. Sec. 11, Ch. 628, L. 1979.

72-14-402. Claim for money deposited in county treasury. When any person appears and claims the money paid into the county treasury, the district court of such county must inquire into such claim and, if satisfied of his right thereto, must make an order to that effect, and upon presentation of the order, the treasurer must draw his warrant on the special fund for the amount to which claimant is entitled.

History: En. Sec. 2, Ch. 128, L. 1947; R.C.M. 1947, 91-525.

72-14-403. Deposit of unclaimed property in state treasury — escheat. (1) All money or other property distributed in the administration of an estate of a decedent or as the subject of a trust and deposited before or after July 1, 1947, with the county treasurer to the credit of the distributee or beneficiary and any money remaining on deposit to the credit of an estate after final distribution must be delivered into the state treasury for deposit in the agency fund by the county treasurer upon the expiration of 1 year from the day of such deposit.

(2) Money or other property so deposited in the state treasury, if not claimed by the person or persons entitled thereto by bringing an action as provided in part 3 of this chapter, shall escheat to the state of Montana and be placed in the public school subfund of the trust and legacy fund as provided therein.

History: En. Sec. 3, Ch. 128, L. 1947; amd. Sec. 117, Ch. 147, L. 1963; R.C.M. 1947, 91-526; amd. Sec. 12, Ch. 628, L. 1979.

CHAPTER 15

PUBLIC ADMINISTRATOR

Part 1 — Powers and Duties in Acquisition of Estates

Section

72-15-101. Other provisions to supplement chapter.
72-15-102. When public administrator to take charge of estate.

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72-15-104. Duty to commence actions for recovery of property.
72-15-105. Duty of persons in whose house stranger dies — notification to public administrator.
72-15-106. Civil officers to notify public administrator of property in danger of loss or waste.
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Part 1

Powers and Duties in Acquisition of Estates

72-15-101. Other provisions to supplement chapter. When no direction is given in this chapter for the government or guidance of a public administrator in the discharge of his duties or for the administration of an estate in his hands, the provisions of this title must govern.

History: En. Sec. 350, p. 330, L. 1877; re-en. Sec. 350, 2nd Div. Rev. Stat. 1879; re-en. Sec. 350, 2nd Div. Comp. Stat. 1887; re-en. Sec. 4528, Pol. C. 1895; re-en. Sec. 3091, Rev. C. 1907; re-en. Sec. 10008, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1743; re-en. Sec. 10008, R.C.M. 1935; R.C.M. 1947, 91-619; amd. Sec. 18, Ch. 6, L. 1979.

72-15-102. When public administrator to take charge of estate. (1) Every public administrator duly elected, commissioned, and qualified must take charge of estates of persons dying within his county as follows:

(a) of estates of decedents for which no administrators are appointed and which, in consequence thereof, are being wasted, uncared for, or lost;

(b) of estates of decedents who have no known heirs;

(c) of estates ordered into his hands by the court; and

(d) of estates upon which letters of administration have been issued to him by the court.

(2) However, it shall be unlawful for any public administrator of any county of the state of Montana to file any petition for the issuance to him as such public administrator of letters of administration of the estate of any decedent until at least 30 days have elapsed from the day of the death of any such decedent, unless it is affirmatively shown and made to appear in and by any such petition for letters of administration that there are no known heirs of such decedent or that all of the known heirs of such decedent reside outside of the state of Montana and that the estate of such decedent consists of property of such a nature that it will be lost, wasted, or depreciated in value unless cared for and administered upon at once.

History: En. Sec. 333, p. 326, L. 1877; re-en. Sec. 333, 2nd Div. Rev. Stat. 1879; re-en. Sec. 333, 2nd Div. Comp. Stat. 1887; re-en. Sec. 4510, Pol. C. 1895; re-en. Sec. 3073, Rev. C. 1907; re-en. Sec. 9990, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1726; re-en. Sec. 9990, R.C.M. 1935; amd. Sec. 1, Ch. 77, L. 1941; R.C.M. 1947, 91-601.

72-15-103. Requirement to procure letters of administration — bond and oath. (1) Whenever a public administrator takes charge of an estate under order of the court, he must with all convenient dispatch procure letters of administration thereon, in like manner and on like proceedings as letters of administration are issued to other persons.

(2) His official bond and oath are in lieu of a personal representative's bond and oath, but when real estate is ordered to be sold, another bond may be required by the court.

History: En. Sec. 334, p. 326, L. 1877; re-en. Sec. 334, 2nd Div. Rev. Stat. 1879; re-en. Sec. 334, 2nd Div. Comp. Stat. 1887; re-en. Sec. 4511, Pol. C. 1895; re-en. Sec. 3074, Rev. C. 1907; re-en. Sec. 9991, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1727; re-en. Sec. 9991, R.C.M. 1935; amd. Sec. 4, Ch. 263, L. 1975; R.C.M. 1947, 91-602.

72-15-104. Duty to commence actions for recovery of property. The public administrator must institute all actions and prosecutions necessary to recover the property, debts, papers, or other estate of the decedent.

History: En. Sec. 339, p. 327, L. 1877; re-en. Sec. 339, 2nd Div. Rev. Stat. 1879; re-en. Sec. 339, 2nd Div. Comp. Stat. 1887; re-en. Sec. 4516, Pol. C. 1895; re-en. Sec. 3079, Rev. C. 1907; re-en. Sec. 9996, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1732; re-en. Sec. 9996, R.C.M. 1935; R.C.M. 1947, 91-607.

72-15-105. Duty of persons in whose house stranger dies — notification to public administrator. Whenever a stranger or person without known heirs dies intestate in the house or premises of another, the possessor of such premises or anyone knowing the facts must give immediate notice thereof to the public administrator of the county; in default of so doing, he is liable for any damage that may be sustained thereby, to be recovered by the public administrator or any person interested.

History: En. Sec. 335, p. 326, L. 1877; re-en. Sec. 335, 2nd Div. Rev. Stat. 1879; re-en. Sec. 335, 2nd Div. Comp. Stat. 1887; re-en. Sec. 4512, Pol. C. 1895; re-en. Sec. 3075, Rev. C. 1907; re-en. Sec. 9992, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1728; re-en. Sec. 9992, R.C.M. 1935; R.C.M. 1947, 91-603.

72-15-106. Civil officers to notify public administrator of property in danger of loss or waste. All civil officers must inform the public administrator of all property known to them belonging to a decedent which is liable to loss, injury, or waste and which, by reason thereof, ought to be in the possession of the public administrator.

History: En. Sec. 338, p. 327, L. 1877; re-en. Sec. 338, 2nd Div. Rev. Stat. 1879; re-en. Sec. 338, 2nd Div. Comp. Stat. 1887; re-en. Sec. 4515, Pol. C. 1895; re-en. Sec. 3078, Rev. C. 1907; re-en. Sec. 9995, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1731; re-en. Sec. 9995, R.C.M. 1935; R.C.M. 1947, 91-606.

72-15-107. Power to require persons controlling property to furnish statement describing property. Whenever any person dies in any county of this state and no administrator has been appointed to take charge of his estate, the public administrator of such county, prior to the issuance of letters of administration to him, shall have authority to make a written demand upon any person, firm, bank, or corporation, which he believes holds or has in its possession or control any money, evidence of indebtedness, or other personal property or which owes to such deceased person any money, to furnish to him a written statement, under oath, showing the amount of money or the evidence of indebtedness or personal property of such deceased person held by it fully describing the same and the total sums of money, if any, due from it to such deceased person. Upon receipt of such written demand, the person, firm, bank, or corporation receiving the same shall immediately furnish, under oath, to such public administrator said statement.

History: En. Sec. 1, Ch. 134, L. 1909; re-en. Sec. 10010, R.C.M. 1921; re-en. Sec. 10010, R.C.M. 1935; R.C.M. 1947, 91-621.

72-15-108. Refusal to furnish statement — misdemeanor. Any person, firm, bank, or corporation or officer, agent, or employee thereof refusing upon demand to furnish the statement as required by 72-15-107 shall be guilty of a misdemeanor.

History: En. Sec. 2, Ch. 134, L. 1909; re-en. Sec. 10011, R.C.M. 1921; re-en. Sec. 10011, R.C.M. 1935; R.C.M. 1947, 91-622.

72-15-109. Order to examine person in possession or charged with misappropriation of estate. When the public administrator complains to the district court or a judge thereof, on oath, that any person has concealed, committed theft of, or disposed of or has in his possession any money, goods, property, or effects to the possession of which such administrator is entitled in his official capacity, the court or judge may cite such person to appear and may examine him on oath touching the matter of such complaint.

History: En. Sec. 340, p. 328, L. 1877; re-en. Sec. 340, 2nd Div. Rev. Stat. 1879; re-en. Sec. 340, 2nd Div. Comp. Stat. 1887; re-en. Sec. 4517, Pol. C. 1895; re-en. Sec. 3080, Rev. C. 1907; re-en. Sec. 9997, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1733; re-en. Sec. 9997, R.C.M. 1935; amd. Sec. 65, Ch. 359, L. 1977; R.C.M. 1947, 91-608.

72-15-110. Refusal to be examined — civil contempt. All such interrogatories and answers must be reduced to writing and signed by the party examined and filed in the court. If the person so cited refuses to appear and submit to such examination or to answer such interrogatories as may be put to him touching the matter of such complaint, the court or judge may commit him to the county jail, there to remain in close custody until he submits to the order of the court or judge.

History: En. Sec. 341, p. 328, L. 1877; re-en. Sec. 341, 2nd Div. Rev. Stat. 1879; re-en. Sec. 341, 2nd Div. Comp. Stat. 1887; re-en. Sec. 4518, Pol. C. 1895; re-en. Sec. 3081, Rev. C. 1907; re-en. Sec. 9998, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1734; re-en. Sec. 9998, R.C.M. 1935; R.C.M. 1947, 91-609.

Part 2

Powers and Duties in Administration

72-15-201. Duty to make out inventory, administer, and account. The public administrator must make out and return an inventory of all estates taken into his possession and administer and account for the same according to the provisions of this chapter, subject to the control and directions of the court.

History: En. Sec. 336, p. 326, L. 1877; re-en. Sec. 336, 2nd Div. Rev. Stat. 1879; re-en. Sec. 336, 2nd Div. Comp. Stat. 1887; re-en. Sec. 4513, Pol. C. 1895; re-en. Sec. 3076, Rev. C. 1907; re-en. Sec. 9993, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1729, re-en. Sec. 9993, R.C.M. 1935; R.C.M. 1947, 91-604.

72-15-202. Duty to deliver up estate when letters granted to another. If at any time letters testamentary or of administration are regularly granted to any other person on the estate of which the public administrator has charge, he must, under order of the court, account for, pay, and deliver to the executor or administrator thus appointed all the money, property, papers, and estate of every kind in his possession or under his control.

History: En. Sec. 337, p. 327, L. 1877; re-en. Sec. 337, 2nd Div. Rev. Stat. 1879; re-en. Sec. 337, 2nd Div. Comp. Stat. 1887; re-en. Sec. 4514, Pol. C. 1895; re-en. Sec. 3077, Rev. C. 1907; re-en. Sec. 9994, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1730; re-en. Sec. 9994, R.C.M. 1935; R.C.M. 1947, 91-605.

72-15-203. Power of court to order account and delivery of estate at any time. The court or judge may, at any time, order the public administrator to account for and deliver all the money of an estate in his hands to the heirs or to the executors or administrators regularly appointed.

History: En. Sec. 342, p. 328, L. 1877; re-en. Sec. 342, 2nd Div. Rev. Stat. 1879; re-en. Sec. 342, 2nd Div. Comp. Stat. 1887; re-en. Sec. 4519, Pol. C. 1895; re-en. Sec. 3082, Rev. C. 1907; re-en. Sec. 9999, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1735; re-en. Sec. 9999, R.C.M. 1935; R.C.M. 1947, 91-610.

72-15-204. Duty to keep register. It is the duty of the public administrator to keep a book to be labeled "Register of Public Administrator" in which he must enter:

(1) the name of every deceased person on whose estate he administers;
(2) the date of granting letters;
(3) money received;
(4) the property and its value;
(5) proceeds of all sales of property;
(6) the amount of his fees;
(7) the expenses of administration;
(8) the amount of the estate after all charges and expenses have been paid;
(9) the disposition of the property on distribution;
(10) the date of discharge of administrator; and
(11) such other matters as may be necessary to give a full and complete history of each estate administered by him.

History: En. Sec. 4529, Pol. C. 1895; re-en. Sec. 3092, Rev. C. 1907; re-en. Sec. 10009, R.C.M. 1921; re-en. Sec. 10009, R.C.M. 1935; R.C.M. 1947, 91-620.

72-15-205. Deposit of moneys with county treasurer — withdrawals for administrative costs — investment. (1) It is the duty of every public administrator, as soon as he receives the same, to deposit with the county treasurer of the county in which probate proceedings are pending all moneys of the estate, and such moneys may be drawn upon the order of the personal representative, countersigned by a district judge, when required for the purposes of administration.

(2) It is the duty of the county treasurer to receive and safely keep all such moneys and pay them out upon the order of the personal representative, when countersigned by a district judge and not otherwise, and to keep an account with such estate of all moneys received and paid to him; and for the safekeeping and payment of all such moneys, as herein provided, the treasurer and his sureties are liable upon his official bond.

(3) The moneys thus deposited may, upon order of the court or judge, be invested pending the proceedings in securities of the United States or of this state when such investment is for the best interests of the estate.

History: En. Sec. 344, p. 329, L. 1877; re-en. Sec. 344, 2nd Div. Rev. Stat. 1879; re-en. Sec. 344, 2nd Div. Comp. Stat. 1887; re-en. Sec. 4521, Pol. C. 1895; re-en. Sec. 3084, Rev. C. 1907; re-en. Sec. 10001, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1737; amd. Sec. 1, Ch. 119, L. 1929; amd. Sec. 1, Ch. 76, L. 1931; re-en. Sec. 10001, R.C.M. 1935; amd. Sec. 14, Ch. 365, L. 1974; R.C.M. 1947, 91-612(part).

72-15-206. Monthly settlement of accounts. The public administrator is required to account and to settle and adjust his accounts, relating to the care and disbursement of money or property belonging to estates in his hands, with the clerk of the district court on the first Monday of each month, and he must pay to the county treasurer any money remaining in his hands of an estate unclaimed.

History: En. Sec. 346, p. 329, L. 1877; re-en. Sec. 346, 2nd Div. Rev. Stat. 1879; re-en. Sec. 346, 2nd Div. Comp. Stat. 1887; re-en. Sec. 4523, Pol. C. 1895; re-en. Sec. 3086, Rev. C. 1907; re-en. Sec. 10003, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1739; re-en. Sec. 10003, R.C.M. 1935; amd. Sec. 5, Ch. 263, L. 1975; R.C.M. 1947, 91-614.

72-15-207. Annual account of condition of all estates. (1) The public administrator must once each year make to the district court or a judge thereof, under oath, a return of all estates of decedents which have come into his hands stating:

(a) the value of the same;
(b) the money which has come into his hands from each estate;
(c) what he has done with it;
(d) the amount of his fees and expenses incurred;
(e) the balance, if any, remaining in his hands.

(2) He must post a copy of the same in the office of the clerk of the district court of the county.

History: En. Sec. 343, p. 329, L. 1877; re-en. Sec. 343, 2nd Div. Rev. Stat. 1879; re-en. Sec. 343, 2nd Div. Comp. Stat. 1887; re-en. Sec. 4520, Pol. C. 1895; re-en. Sec. 3083, Rev. C. 1907; re-en. Sec. 10000, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1736; re-en. Sec. 10000, R.C.M. 1935; amd. Sec. 1, Ch. 116, L. 1939; R.C.M. 1947, 91-611.

72-15-208. Power of court to require additional report or bond. The court or judge may, at any time, require the public administrator to report the amount of moneys and property of any estate in his hands and may require him at any time to file additional bond or bonds.

History: En. Sec. 4527, Pol. C. 1895; re-en. Sec. 3090, Rev. C. 1907; re-en. Sec. 10007, R.C.M. 1921; re-en. Sec. 10007, R.C.M. 1935; R.C.M. 1947, 91-618.

72-15-209. Power of public administrator to administer oaths. Public administrators may administer oaths in regard to all matters touching the discharge of their duties or the administration of estates in their hands.

History: En. Sec. 349, p. 330, L. 1877; re-en. Sec. 349, 2nd Div. Rev. Stat. 1879; re-en. Sec. 349, 2nd Div. Comp. Stat. 1887; re-en. Sec. 4526, Pol. C. 1895; re-en. Sec. 3089, Rev. C. 1907; re-en. Sec.

10006, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1742; re-en. Sec. 10006, R.C.M. 1935; R.C.M. 1947, 91-617.

72-15-210. Fees — how paid. The fees of all officers chargeable to estates in the hands of public administrators must be paid out of the assets thereof, as soon as the same come into his hands.

History: En. Sec. 348, p. 330, L. 1877; re-en. Sec. 348, 2nd Div. Rev. Stat. 1879; re-en. Sec. 348, 2nd Div. Comp. Stat. 1887; re-en. Sec. 4525, Pol. C. 1895; re-en. Sec. 3088, Rev. C. 1907; re-en. Sec. 10005, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1741; re-en. Sec. 10005, R.C.M. 1935; R.C.M. 1947, 91-616.

72-15-211. Conflict of interest prohibited — affidavit. The public administrator must not be interested in the expenditures of any kind made on account of any estate he administers; nor must he be associated, in business or otherwise, with anyone who is so interested; and he must attach to his report and publication, made in accordance with 72-15-207, his affidavit to that effect.

History: En. Sec. 345, p. 329, L. 1877; re-en. Sec. 345, 2nd Div. Rev. Stat. 1879; re-en. Sec. 345, 2nd Div. Comp. Stat. 1887; re-en. Sec. 4522, Pol. C. 1895; re-en. Sec. 3085, Rev. C. 1907; re-en. Sec. 10002, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1738; re-en. Sec. 10002, R.C.M. 1935; R.C.M. 1947, 91-613.

72-15-212. Final settlement of estate — sale of property — escheat. At the final settlement of any estate, if there be no heirs or other claimants thereof, the district judge shall make an order directing the administrator to sell all property belonging to the estate and pay the proceeds to the county treasurer, who shall credit the same and all other moneys belonging to said estate to the escheated estates fund, and the county treasurer shall forthwith remit all of said money to the department of revenue with a statement as to the estates to which the money belongs, which remittance shall be treated as provided in chapter 14, as amended.

History: En. Sec. 344, p. 329, L. 1877; re-en. Sec. 344, 2nd Div. Rev. Stat. 1879; re-en. Sec. 344, 2nd Div. Comp. Stat. 1887; re-en. Sec. 4521, Pol. C. 1895; re-en. Sec. 3084, Rev. C. 1907; re-en. Sec. 10001, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1737; amd. Sec. 1, Ch. 119, L. 1929; amd. Sec. 1, Ch. 76, L. 1931; re-en. Sec. 10001, R.C.M. 1935; amd. Sec. 14, Ch. 365, L. 1974; R.C.M. 1947, 91-612(part).

72-15-213. Wrongful failure of public administrator to deposit moneys — action on bond. When it appears from the returns made in pursuance of the foregoing sections that any money remains in the hands of the public administrator after final settlement of the estate unclaimed which should be paid over to the county treasurer, the court or judge must order the same paid over to the county treasurer; and on failure of the public administrator to comply with the order within 10 days after the same is made, the county attorney must immediately institute the requisite proceedings against the public administrator for a judgment against him and the sureties on his official bond, in the amount of the money so withheld and costs.

History: En. Sec. 347, p. 330, L. 1877; re-en. Sec. 347, 2nd Div. Rev. Stat. 1879; re-en. Sec. 347, 2nd Div. Comp. Stat. 1887; re-en. Sec. 4524, Pol. C. 1895; re-en. Sec. 3087, Rev. C. 1907; re-en. Sec. 10004, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1740; re-en. Sec. 10004, R.C.M. 1935; R.C.M. 1947, 91-615.

Part 3

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72-15-301. Compensation of public administrator. The public administrator shall receive and collect for his own use as full compensation for his services, including attorney's fees, the amounts provided for in 72-3-631 and 72-3-633.

History: Ap. p. Sec. 8, Ch. 134, L. 1909; re-en. Sec. 10017, R.C.M. 1921; re-en. Sec. 10017, R.C.M. 1935; amd. Sec. 1, Ch. 3, L. 1969; amd. Sec. 6, Ch. 263, L. 1975; Sec. 91-628, R.C.M. 1947; Ap. p. Sec. 4641, Pol. C. 1895; re-en. Sec. 3174, Rev. C. 1907; re-en. Sec. 4923, R.C.M. 1921; re-en. Sec. 4923, R.C.M. 1935; amd. Sec. 2, Ch. 263, L. 1975; Sec. 25-237, R.C.M. 1947; R.C.M. 1947, 25-237, 91-628; amd. Sec. 2, Ch. 424, L. 1979.

72-15-302. Retiring public administrator may close pending estates. The public administrator, upon the expiration or termination of his term of office, may continue to administer estates not closed by filing and presenting to the court a full and complete account pertaining to each estate not closed and securing an order of court granting him letters of administration and qualifying himself as a personal representative.

History: En. Sec. 1, Ch. 4, L. 1941; amd. Sec. 7, Ch. 263, L. 1975; R.C.M. 1947, 91-629.

72-15-303. Accounting and surrender of pending estates on retirement of public administrator. Should said public administrator, upon the expiration or termination of his office and within 60 days thereafter, fail to qualify as general administrator of estates not yet closed, he shall, upon demand of his successor to such office or voluntarily if he desires to be relieved from further performance of the trust, surrender to said successor all estates not closed and property belonging to such estates, having first filed and presented to the court for approval a full and complete account pertaining to such estate not closed.

History: En. Sec. 2, Ch. 4, L. 1941; R.C.M. 1947, 91-630.

72-15-304. Adjustment of compensation. The court shall determine and allow such predecessor in office for his services rendered in connection with estates not closed a compensation based upon the commission prescribed and allowed by law in proportion to the services necessarily rendered and those necessary to be rendered by such successor in closing up such estates. Such successor shall thereupon be allowed and paid the balance of such commission allowed.

History: En. Sec. 3, Ch. 4, L. 1941; amd. Sec. 8, Ch. 263, L. 1975; R.C.M. 1947, 91-631.

CHAPTER 16

INHERITANCE AND ESTATE TAXES

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Part 1

General Provisions

72-16-101. Definitions. In parts 1 through 8, the following definitions apply:

(1) The words "estate" and "property" shall be taken to mean the real and personal property or interest therein passing or transferred to individual legatees, devisees, heirs, next of kin, grantees, donees, or vendees and not as the property or interest therein of the decedent, grantor, donor, or vendor and shall include all personal property within or without the state.

(2) The word "transfer" shall be taken to include the passing of property or any interest therein, in possession or enjoyment, present or future, by inheritance, descent, devise, succession, bequest, grant, deed, bargain, sale, gift, or appointment in the manner herein prescribed to each individual or corporation.

(3) The word "decedent" shall include the testator, intestate, grantor, bargainor, vendor, or donor.

(4) "Intangible" or "intangible property", when used without other qualifications, shall be taken to include all moneys, stocks, bonds, notes, securities, and credits of all kinds, secured or unsecured.

(5) The words "county treasurer", "public administrator", and "county attorney" shall be taken to mean the treasurer, public administrator, and county attorney of the county in which the district court has jurisdiction of the proceedings.

(6) The terms "joint" and "jointly" refer to ownership of property by two or more persons having as one of the incidents of such ownership the right of survivorship in the surviving owner or owners upon the death of one of the owners. This definition does not affect the concept of property owned as tenants in common, and this type of ownership shall continue to be recognized where applicable.

History: En. Sec. 22, Ch. 65, L. 1923; re-en. Sec. 10400.43, R.C.M. 1935; amd. Sec. 7, Ch. 490, L. 1977; R.C.M. 1947, 91-4453.

72-16-102. Jurisdiction. (1) The district court of every county of the state having jurisdiction to grant letters testamentary or of administration upon the estate of a decedent whose property is chargeable with any tax under the inheritance tax laws or to appoint a trustee of such estate or any part thereof or to give ancillary letters thereon shall have jurisdiction to hear and determine all questions arising under the provisions of the inheritance tax laws and to do any act in relation thereto authorized by law to be done by a district court in other matters or proceedings coming within its jurisdiction.

(2) If two or more district courts shall be entitled to exercise any such jurisdiction, the district court first acquiring jurisdiction hereunder shall retain the same to the exclusion of every other district court.

History: En. Sec. 12, Ch. 65, L. 1923; amd. Sec. 3, Ch. 150, L. 1925; re-en. Sec. 10400.13, R.C.M. 1935; amd. Sec. 1, Ch. 79, L. 1951; amd. Sec. 81, Ch. 391, L. 1973; amd. Sec. 6, Ch. 365, L. 1974; R.C.M. 1947, 91-4423.

Part 2

Powers and Duties of State Officers and Agencies

72-16-201. Powers of department generally — duty to supervise administration of tax laws — reports. (1) The department of revenue in the conduct of inheritance tax affairs has the same powers for gathering information and making investigations as is conferred by law on the department in the performance of its other duties.

(2) The department shall supervise the administration of the inheritance tax laws and investigate such particular estates to which the inheritance tax laws apply throughout the various counties of the state and cause to be made and filed in its office reports of such investigations, together with specific information and facts as to particular estates, that may seem to require special consideration and attention by the department of justice; but no information so acquired may, in advance of legal action, be disclosed to anyone except proper officials and persons interested in such estate.

History: En. Sec. 18, Ch. 65, L. 1923; amd. Sec. 6, Ch. 150, L. 1925; re-en. Secs. 10400.34, 10400.35, R.C.M. 1935; amd. Secs. 95, 96, Ch. 391, L. 1973; R.C.M. 1947, 91-4444, 91-4445(part); amd. Sec. 19, Ch. 6, L. 1979.

72-16-202. Report to governor and legislature. The department of revenue shall biennially report to the governor and to the legislature at the opening of the sessions the general result of its labors and investigations in inheritance tax matters during the previous biennial period, together with specific reports of the several counties where the administration of the inheritance tax laws has been lax and unsatisfactory, with such recommendations for action thereon by the legislature as may be deemed advisable and proper.

History: En. Sec. 18, Ch. 65, L. 1923; amd. Sec. 6, Ch. 150, L. 1925; re-en. Sec. 10400.35, R.C.M. 1935; amd. Sec. 96, Ch. 391, L. 1973; R.C.M. 1947, 91-4445(part).

72-16-203. Employment of assistants by department. The department of revenue may employ such other persons as experts and assistants as may be necessary to perform the duties that may be required of the department and fix their compensation.

History: En. Sec. 24, Ch. 65, L. 1923; re-en. Sec. 10400.45, R.C.M. 1935; amd. Sec. 103, Ch. 391, L. 1973; R.C.M. 1947, 91-4454.

72-16-204. Subpoena and discovery powers — contempt. (1) Oaths to witnesses in any matter under the investigation or consideration of the department of revenue may be administered by the director of revenue or his appointed agents.

(2) In case any witness shall fail to obey any summons to appear before the department or shall refuse to testify or answer any material questions or to produce records, books, papers, or documents, when required to do so, such failure or refusal shall be reported to the attorney general, who shall thereupon institute proceedings in the proper district court to compel obedience to any summons or order of the department or to punish witnesses for any such neglect or refusal.

History: En. Sec. 25, Ch. 65, L. 1923; re-en. Sec. 10400.46, R.C.M. 1935; amd. Sec. 104, Ch. 391, L. 1973; R.C.M. 1947, 91-4455(part).

72-16-205. Compensation of witnesses and officers serving subpoenas. In the discretion of the department of revenue, officers who serve summons or subpoenas and witnesses attending shall receive like compensation as officers and witnesses in the district court.

History: En. Sec. 25, Ch. 65, L. 1923; re-en. Sec. 10400.46, R.C.M. 1935; amd. Sec. 104, Ch. 391, L. 1973; R.C.M. 1947, 91-4455(part).

72-16-206. Perjury. Any person who shall testify falsely in any material manner under the consideration of the department of revenue shall be guilty of and punished for perjury.

History: En. Sec. 25, Ch. 65, L. 1923; re-en. Sec. 10400.46, R.C.M. 1935; amd. Sec. 104, Ch. 391, L. 1973; R.C.M. 1947, 91-4455(part).

72-16-207. Forms and blanks — department to furnish. The department of revenue shall prescribe such forms and prepare such blanks as may be necessary in inheritance tax proceedings, and such blanks shall be printed at the expense of the state and furnished to each district court or the clerk thereof upon the request of the judge or clerk thereof.

History: En. Sec. 18, Ch. 65, L. 1923; amd. Sec. 6, Ch. 150, L. 1925; re-en. Sec. 10400.38, R.C.M. 1935; amd. Sec. 99, Ch. 391, L. 1973; amd. Sec. 10, Ch. 365, L. 1974; R.C.M. 1947, 91-4448.

72-16-208. Powers and duties of department as to nonresident estates. The department of revenue shall also gather information and make investigations and reports concerning the estates of nonresident decedents within the provisions of the inheritance tax laws and shall especially investigate the probate and other records for such probable estates without the state and report thereon from time to time to the department of justice and to the proper district court for appropriate legal action; but no information so acquired may, in advance of legal action, be disclosed to anyone except proper officials and persons interested in such estate.

History: En. Sec. 18, Ch. 65, L. 1923; amd. Sec. 6, Ch. 150, L. 1925; re-en. Sec. 10400.36, R.C.M. 1935; amd. Sec. 97, Ch. 391, L. 1973; R.C.M. 1947, 91-4446; amd. Sec. 20, Ch. 6, L. 1979.

72-16-209. Power of composition and compromise in certain cases. (1) The department of revenue is authorized to enter into an agreement with the executor, administrator, or trustee of any estate in which remainders or expectant estates have been of such a nature or so disposed and circumstanced that the taxes therein were held not presently payable or where the interests of the legatees or devisees are not ascertainable under the provisions of parts 1 through 8 or whenever a tax is claimed on account of the transfer of any property of a nonresident decedent and to compound such taxes upon such terms as may be deemed equitable and expedient and to grant discharges to said executors, administrators, or trustees upon the payment of the taxes provided for in such composition. However, no such composition shall be conclusive in favor of such executors, administrators, or trustees as against the interests of such cestui que trust as may possess either present rights of enjoyment or fixed, absolute, or indefeasible rights of future enjoyment or of such as would possess such rights in the event of the immediate termination of particular estates, unless they consent thereto either personally when competent or by guardian.

(2) Composition or settlement made or effected under the provisions of this section shall be executed in triplicate, and one copy shall be filed in the office of the clerk of the district court of the county in which the tax was paid; one copy to be delivered to the executors, administrators, or trustees, who shall be parties thereto, and one copy to be retained by the department of revenue.

(3) In every estate in which the amount of inheritance tax collectible shall exceed or probably exceed the sum of $1,000, there shall be no compounding, composition, or settlement of the taxes under the authority conferred by this section or otherwise, until the department of revenue shall have investigated such estate and made a report thereon or until the department consents to such compounding, compromise, or settlement.

History: (1), (2)En. Sec. 20, Ch. 65, L. 1923; re-en. Sec. 10400.41, R.C.M. 1935; amd. Sec. 102, Ch. 391, L. 1973; Sec. 91-4451, R.C.M. 1947; (3)En. Sec. 18, Ch. 65, L. 1923; amd. Sec. 6, Ch. 150, L. 1925; re-en. Sec. 10400.37, R.C.M. 1935; amd. Sec. 98, Ch. 391, L. 1973; Sec. 91-4447, R.C.M. 1947; R.C.M. 1947, 91-4447(part), 91-4451.

72-16-210. Duty of justice department. The department of justice shall carry out and enforce the recommendations and directions of the department of revenue in all matters pertaining to the conduct of inheritance tax affairs.

History: En. Sec. 18, Ch. 65, L. 1923; amd. Sec. 6, Ch. 150, L. 1925; re-en. Sec. 10400.37, R.C.M. 1935; amd. Sec. 98, Ch. 391, L. 1973; R.C.M. 1947, 91-4447(part); amd. Sec. 21, Ch. 6, L. 1979.

72-16-211. Public administrator — duty to investigate concerning tax — compensation generally. (1) It shall be the duty of the public administrator, under the general supervision of the department of revenue and with the assistance of the county attorney, when required by the department or district judge, to investigate the estates of deceased persons within his county and to appear for and act in behalf of the county and state in the district court in such estates as the court may in its discretion deem necessary.

(2) For such services the public administrator shall be entitled to 5% of the gross inheritance tax as determined in each such estate, to be paid by the county treasurer out of the inheritance tax funds upon an order of the district judge, provided that the minimum fee for each such estate shall not be less than $5 and that it shall not exceed $25; but in cases of unusual difficulty in estates of resident decedents where the tax exceeds $500, the district

judge may allow the public administrator such additional compensation as he may deem just and reasonable.

History: En. Sec. 17, Ch. 65, L. 1923; re-en. Sec. 10400.43, R.C.M. 1935; amd. Sec. 94, Ch. 391, L. 1973; R.C.M. 1947, 91-4443.

72-16-212. Power of public administrator or other to seek administration when no application made. When no application for administration of the estate of any deceased person is made within 6 months after the demise of such person and such estate appears to come under the provisions of the inheritance tax laws or when administration has been completed without determining the tax, the public administrator of the proper county or any person interested in such estate may make application for such special or general administration as may be necessary for the purpose of the adjustment and payment of such tax, if any, or if no tax is due, for an order determining that fact.

History: En. Sec. 17, Ch. 65, L. 1923; re-en. Sec. 10400.31, R.C.M. 1935; R.C.M. 1947, 91-4441(part).

72-16-213. Public administrator — duty as to transfer made in contemplation of death without payment of tax. Where it appears that the estate of a deceased person subject to the inheritance tax laws was transferred in contemplation of the death of the grantor without the adjustment and payment of the inheritance taxes and no application for such adjustment is made within 6 months after the demise of such grantor, the public administrator of the proper county shall notify the department of revenue and on its order make application for and shall be entitled to such general or special administration as may be necessary for the purpose of the adjustment and payment of the inheritance taxes provided by law and shall administer such estate the same as other estates are administered as though such estate had not been transferred by the grantor.

History: En. Sec. 17, Ch. 65, L. 1923; re-en. Sec. 10400.32, R.C.M. 1935; amd. Sec. 93, Ch. 391, L. 1973; R.C.M. 1947, 91-4442.

72-16-214. Public administrator — compensation under special provisions. In cases arising under 72-16-212 and 72-16-213, the public administrator, if appointed such special administrator, shall be entitled in the discretion of the court to the fees allowed by law to administrators or to other reasonable compensation, unless it be found that no tax is due.

History: En. Sec. 17, Ch. 65, L. 1923; re-en. Sec. 10400.31, R.C.M. 1935; R.C.M. 1947, 91-4441(part).

72-16-215. County treasurer — monthly report — payment of collections to department — interest on unpaid amounts. On or before the fifth day of each month, each county treasurer shall make a report under oath to the department of revenue listing all payments received by him under the inheritance tax laws during the preceding month and stating for what estate, by whom, and when paid. The form of such report shall be prescribed by the department. He shall at the same time pay the department all the payments received by him under the inheritance tax laws and not previously paid to the department, and for all such payments collected by him and not paid to the department within 5 days from the time herein required, he shall pay interest at the rate of 10% per annum.

History: En. Sec. 19, Ch. 65, L. 1923; amd. Sec. 7, Ch. 150, L. 1925; re-en. Sec. 10400.40, R.C.M. 1935; amd. Sec. 2, Ch. 36, L. 1971; amd. Sec. 101, Ch. 391, L. 1973; R.C.M. 1947, 91-4450.

72-16-216. Clerk of court — duty to furnish copies of filed documents. It shall be the duty of the clerk of the district court to furnish to the department of revenue copies of such documents filed in connection with probate matters as the department may require.

History: En. Sec. 18, Ch. 65, L. 1923; amd. Sec. 6, Ch. 150, L. 1925; re-en. Sec. 10400.39, R.C.M. 1935; amd. Sec. 100, Ch. 391, L. 1973; R.C.M. 1947, 91-4449.

72-16-217. List of deaths to be made by department of health — copy to county clerk. The department of health and environmental sciences shall prepare on or before the fifth of January, April, July, and October of each year a list of all deaths, together with the date of such death, reported to it during such period and shall send a copy of such list of deaths to the county clerk of each county in the state.

History: En. Sec. 2, Ch. 186, L. 1935; re-en. Sec. 10400.50, R.C.M. 1935; R.C.M. 1947, 91-4458.

72-16-218. County clerk to check records against list — report to department. (1) The county clerk, upon the receipt of the list of deaths provided for in 72-16-217, shall immediately check the records of his county to determine whether any of the deceased persons whose names appear upon such list may have made any transfer of property or of property rights within such county during the 3 years preceding the death of such person or whether such deceased person may have been possessed of any property in such county at the time of his death.

(2) If he shall find that any such deceased person may have made any such transfers of property or of property rights or have died possessed of such, he shall immediately transmit such information to the department of revenue.

History: En. Sec. 3, Ch. 186, L. 1935; re-en. Sec. 10400.51, R.C.M. 1935; amd. Sec. 105, Ch. 391, L. 1973; R.C.M. 1947, 91-4459.

Part 3

Application and Imposition of Tax — Exemptions and Rates — Property Valuation

72-16-301. Taxable transfers generally — contemplation of death. A tax shall be and is hereby imposed upon any transfer of property, real, personal, or mixed or any interest therein or income therefrom in trust or otherwise to any person, association, or corporation in the following cases, except as hereinafter provided:

(1) when the transfer is by will or by intestate laws of this state from any person dying possessed of the property while a resident of the state;

(2) when a transfer is by will or intestate law of property within the state or within its jurisdiction and the decedent was a nonresident of the state at the time of his death;

(3) when the transfer is of property made by a resident or by a nonresident when such nonresident's property is within the state or within its jurisdiction by deed, grant, bargain, sale, or gift made in contemplation of the death of the grantor, vendor, or donor or intended to take effect in possession or enjoyment at or after such death. Every transfer by deed, grant, bargain, sale, or gift made within 3 years prior to the death of the grantor, vendor, or donor of a material part of his estate or in the nature of a final disposition or distribution thereof and without a fair consideration in money or money's worth shall, unless shown to the contrary, be deemed to have been made in contemplation of death within the meaning of this section, but no such transfer by deed, grant, bargain, sale, or gift made before such 3-year period shall be treated as having been made in contemplation of death. However, nothing herein contained shall be deemed to have modified, amended, or repealed the provisions of 72-16-306.

History: Ap. p. Sec. 1, Ch. 65, L. 1923; amd. Sec. 1, Ch. 150, L. 1925; amd. Sec. 1, Ch. 105, L. 1927; amd. Sec. 1, Ch. 186, L. 1935; re-en. Sec. 10400.1, R.C.M. 1935; Sec. 91-4401, R.C.M. 1947; (3)En. Sec. 1, Ch. 65, L. 1923; amd. Sec. 1, Ch. 150, L. 1925; amd. Sec. 1, Ch. 105, L. 1927; amd. Sec. 1, Ch. 186, L. 1935; re-en. Sec. 10400.1, R.C.M. 1935; amd. Sec. 1, Ch. 269, L. 1955; Sec. 91-4402, R.C.M. 1947; R.C.M. 1947, 91-4401(part), 91-4402.

72-16-302. Transfer under power of appointment. Whenever any person or corporation shall exercise a power of appointment derived from any disposition of property made either before or after March 5, 1923, such appointment when made shall be deemed a transfer taxable under the provisions of parts 1 through 8, in the same manner as though the property to which such appointment relates belonged absolutely to the donee of such power and had been bequeathed or devised by such donee by will. Whenever any person or corporation possessing such a power of appointment so derived shall omit or fail to exercise the same within the time provided therefor, in whole or in part, a transfer taxable under the provisions of parts 1 through 8 shall be deemed to take place to the extent of such omission or failure, in the same manner as though the persons or corporations thereby becoming entitled to the possession or enjoyment of the property to which such power related had succeeded thereto by a will of the donee of the power failing to exercise such power, taking effect at the time of such omission or failure.

History: En. Sec. 1, Ch. 65, L. 1923; amd. Sec. 1, Ch. 150, L. 1925; amd. Sec. 1, Ch. 105, L. 1927; amd. Sec. 1, Ch. 186, L. 1935; re-en. Sec. 10400.1, R.C.M. 1935; R.C.M. 1947, 91-4404.

72-16-303. Joint estates — transfer by right of survivorship taxable. (1) Whenever any property, however acquired, real or personal, tangible or intangible, including government bonds of the United States, is inscribed in co-ownership form, held by two or more persons in joint tenancy or as tenants by the entirety, or is deposited in any bank or other depositary in the joint names of two or more persons and payable to the survivor or survivors of them upon the death of one of them, the right of the survivor or survivors to the immediate possession or ownership is a taxable transfer.

(2) The tax is upon the transfer of decedent's interest, one-half or other proper fraction, as evidenced by the written instrument creating the same, as though the property to which the transfer relates belonged to the joint tenants, tenants by the entirety, joint depositors, holders in co-ownership form, or persons, as tenants in common and had been, for inheritance tax purposes,

bequeathed or devised to the survivor or survivors by will, except such part thereof as may be shown to have originally belonged to the survivor and never to have belonged to the decedent when the surviving joint tenant is a spouse or issue of the decedent. In all other cases, the full value of the property shall be taxable, except the portion thereof that originally belonged to the survivor and as to which the decedent had made no contribution; if the decedent had made a contribution to the ownership of the property, the amount of the contribution shall be taxable.

(3) This section shall not be construed to repeal or modify the provisions of 72-16-301(3).

History: En. Sec. 1, Ch. 65, L. 1923; amd. Sec. 1, Ch. 150, L. 1925; amd. Sec. 1, Ch. 105, L. 1927; amd. Sec. 1, Ch. 186, L. 1935; re-en. Sec. 10400.1, R.C.M. 1935; amd. Sec. 1, Ch. 181, L. 1951; amd. Sec. 1, Ch. 490, L. 1977; R.C.M. 1947, 91-4405; amd. Sec. 1, Ch. 636, L. 1979.

72-16-304. Insurance proceeds part of estate — exemption. All insurance payable upon the death of any person over and above $50,000 shall be deemed a part of the property and estate passing to the person or persons entitled to receive the same and, if payable to more than one person, the $50,000 exemption shall be prorated between such persons in proportion to the amount of insurance payable to each.

History: En. Sec. 1, Ch. 65, L. 1923; amd. Sec. 1, Ch. 150, L. 1925; amd. Sec. 1, Ch. 105, L. 1927; amd. Sec. 1, Ch. 186, L. 1935; re-en. Sec. 10400.1, R.C.M. 1935; R.C.M. 1947, 91-4406.

72-16-305. Bequests to executors or trustees — when taxable. If a testator bequeaths property to one or more executors or trustees in lieu of their commissions or allowances or makes them his legatees to an amount exceeding the commissions or allowances prescribed by law for an executor or trustee, the excess in value of the property so bequeathed, above the amount of commissions or allowances prescribed by law in similar cases, shall be taxable by parts 1 through 8.

History: En. Sec. 10, Ch. 65, L. 1923; re-en. Sec. 10400.10, R.C.M. 1935; R.C.M. 1947, 91-4420.

72-16-306. Recording date prima facie date of transfer — transfers recorded after death. Recorded papers evidencing a transfer of property, real, personal, or mixed, or of any interest therein coming within the provisions of parts 1 through 8 are prima facie proof, for the purposes of parts 1 through 8, that it was made as of the date upon which such papers were recorded. Any such transfer, if recorded after the death of the person or persons making such transfer, whatever the form of such transfer, is considered, for the purposes of taxation under the provisions of parts 1 through 8, to have been made by will.

History: En. Sec. 1, Ch. 186, L. 1935; re-en. Sec. 10400.1, R.C.M. 1935; R.C.M. 1947, 91-4408; amd. Sec. 22, Ch. 6, L. 1979.

72-16-307. Tax — when imposed. The tax referred to in 72-16-301 shall be imposed when any person or corporation becomes beneficially entitled, in possession or expectancy, to any property or the income thereof by any such transfer whether made before or after March 5, 1923.

History: En. Sec. 1, Ch. 65, L. 1923; amd. Sec. 1, Ch. 150, L. 1925; amd. Sec. 1, Ch. 105, L. 1927; amd. Sec. 1, Ch. 186, L. 1935; re-en. Sec. 10400.1, R.C.M. 1935; R.C.M. 1947, 91-4403(part).

72-16-308. Tax to be on clear market value — deductions allowed in determining value — valuation of certain farm and business property. (1) The tax so imposed shall be upon the clear market value of such property passing by any such transfer to each person, institution, association, corporation, or body politic at the rates hereinafter prescribed and only upon the excess of the exemption hereinafter granted to such person, institution, association, corporation, or body politic.

(2) In determining the clear market value of the property so passing by any such transfer, the following deductions and no other shall be allowed:

(a) debts of the decedent owing at the date of death, provided that any debt secured by decedent's joint interest in property and for which the decedent was jointly and severally liable is deductible only to the extent of one-half or other proper fraction representing decedent's share of the property;

(b) expenses of funeral and last illness;

(c) all Montana state, county, municipal, and federal taxes, including all penalties and interest thereon, owing by decedent at the date of death;

(d) the ordinary expenses of administration, including:

(i) the commissions and fees of executors and administrators and their attorneys actually allowed and paid;

(ii) attorneys' fees, filing fees, necessary expenses, and closing costs incident to proceedings to terminate joint tenancies, termination of life estates and transfers in contemplation of death, and any and all other proceedings instituted for the determination of inheritance tax; and

(e) federal estate taxes due or paid.

(3) In determining clear market value, the valuation of certain farm and other real property may be made under 72-16-331 through 72-16-342.

History: En. Sec. 1, Ch. 65, L. 1923; amd. Sec. 1, Ch. 150, L. 1925; amd. Sec. 1, Ch. 105, L. 1927; amd. Sec. 1, Ch. 186, L. 1935; re-en. Sec. 10400.1, R.C.M. 1935; amd. Sec. 1, Ch. 5, L. 1957; amd. Sec. 1, Ch. 232, L. 1959; R.C.M. 1947, 91-4407; amd. Sec. 1, Ch. 573, L. 1979; amd. Sec. 43, Ch. 705, L. 1979.

72-16-309 and 72-16-310 reserved.

72-16-311. Exemption — how taken. The exemption allowed to each person, institution, association, corporation, or body politic shall be taken as provided in 72-16-321.

History: En. Sec. 4, Ch. 65, L. 1923; re-en. Sec. 10400.4, R.C.M. 1935; amd. Sec. 1, Ch. 105, L. 1953; amd. Sec. 1, Ch. 218, L. 1963; amd. Sec. 1, Ch. 244, L. 1965; amd. Sec. 1, Ch. 343, L. 1969; amd. Sec. 1, Ch. 317, L. 1973; amd. Sec. 1, Ch. 195, L. 1974; amd. Sec. 11, Ch. 263, L. 1975; amd. Sec. 4, Ch. 490, L. 1977; R.C.M. 1947, 91-4414(1).

72-16-312. Exemption — transfers for charitable or public purposes. (1) The following transfers are totally exempt:

(a) all property transferred to the state or any of its institutions or to local governments within the state for strictly local government or other public purposes;

(b) all property transferred to any society, corporation, institution, or association, in trust or otherwise, or to any foundation or trust organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, no part of the net earnings of which inures to the benefit of any private stockholder or individual and no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation, if any of the following conditions is present:

(i) the society, corporation, institution, foundation, trust, or association is organized solely for religious, charitable, scientific, literary, or educational purposes under the laws of this state or of the United States;

(ii) the property transferred is limited for use within this state;

(iii) the society, corporation, institution, foundation, trust, or association is organized or existing under the laws of another state of the United States or of a foreign state or country and at the date of the decedent's death any one of the following conditions existed:

(A) the other state, foreign state, or foreign country did not impose a legacy, succession, or death tax of any character in respect to property transferred to a similar society, corporation, institution, foundation, trust, or association organized or existing under the laws of this state;

(B) the laws of the other state, foreign state, or foreign country contained a reciprocal provision under which property transferred to a similar society, institution, foundation, trust, or association organized or existing under the laws of another state of the United States or foreign state or country was exempt from legacy, succession, or death taxes of every character, if the other state of the United States or foreign state or country allowed a similar exemption in respect to property transferred to a similar society, institution, foundation, trust, or association organized or existing under the laws of another state of the United States or foreign state or country;

(C) the society, corporation, institution, foundation, trust, or association owns or operates a hospital for crippled children within the United States, primarily practicing orthopedics, to which crippled or afflicted children from the state of Montana are without discrimination gratuitously admitted and treated and the property transferred is limited for use at such hospital.

(2) The tax imposed by 72-16-301 does not apply to transfers to corporations of this state organized under its laws or voluntary associations organized solely for religious, charitable, or educational purposes, which use the property so transferred exclusively for the purposes of their organization within the state.

History: (1)En. Sec. 4, Ch. 65, L. 1923; re-en. Sec. 10400.4, R.C.M. 1935; amd. Sec. 1, Ch. 105, L. 1953; amd. Sec. 1, Ch. 218, L. 1963; amd. Sec. 1, Ch. 244, L. 1965; amd. Sec. 1, Ch. 343, L. 1969; amd. Sec. 1, Ch. 317, L. 1973; amd. Sec. 1, Ch. 195, L. 1974; amd. Sec. 11, Ch. 263, L. 1975; amd. Sec. 4, Ch. 490, L. 1977; Sec. 91-4414, R.C.M. 1947; (2)En. Sec. 1, Ch. 65, L. 1923; amd. Sec. 1, Ch. 150, L. 1925; amd. Sec. 1, Ch. 105, L. 1927; amd. Sec. 1, Ch. 186, L. 1935; re-en. Sec. 10400.1, R.C.M. 1935; Sec. 91-4401, R.C.M. 1947; R.C.M. 1947, 91-4401(part), 91-4414(2); amd. Sec. 23, Ch. 6, L. 1979.

72-16-313. Exemptions of spouse and other relatives. (1) The clear value of all property distributed or passing to decedent's surviving spouse is exempt.

(2) The clear value of all property distributed or passing to the following is exempt:

(a) any child or lineal descendant of the decedent. A determination as to establishment of the parent and child relationship or establishment of a person as a lineal descendant must be made in accordance with the rules for determining relationship for purposes of intestate succession under Title 72, chapter 2, part 2.

(b) any child to whom such decedent for not less than 10 years prior to such transfer stood in the mutually acknowledged relation of a parent, provided such relationship began at or before the child's 15th birthday and was continuous for 10 years.

(3) The following amounts are exempt:

(a) property of the clear value of $7,000 transferred to each of the persons who have attained majority described in 72-16-321(1); and

(b) property of the clear value of $1,000 transferred to each of the persons described in 72-16-321(2).

History: **En. Sec. 4, Ch. 65, L. 1923; re-en. Sec. 10400.4, R.C.M. 1935; amd. Sec. 1, Ch. 105, L. 1953; amd. Sec. 1, Ch. 218, L. 1963; amd. Sec. 1, Ch. 244, L. 1965; amd. Sec. 1, Ch. 343, L. 1969; amd. Sec. 1, Ch. 317, L. 1973; amd. Sec. 1, Ch. 195, L. 1974; amd. Sec. 11, Ch. 263, L. 1975; amd. Sec. 4, Ch. 490, L. 1977; R.C.M. 1947, 91-4414(3), (4), (6); amd. Sec. 1, Ch. 696, L. 1979; amd. Sec. 1, Ch. 202, L. 1981.**

Compiler's Comments

1981 Amendment: Rewrote subsections (2) and (3) to remove a $15,000 limitation on the exemption and to make the exemption applicable to all children and lineal descendants of the decedent instead of to only those who are minors. For prior text, see sec. 1, Ch. 696, L. 1979.

Oversight Committee Bill: Chapter 202, L. 1981 (SB 255), was introduced at the request of the Revenue Oversight Committee. See committee report entitled "Revenue Oversight Committee: Miscellaneous Studies", Legislative Council, 1980.

Applicability: Section 3, Ch. 202, L. 1981, provided: "This act applies to estates of decedents who died after December 31, 1980."

Effective Date: Section 4, Ch. 202, L. 1981, provided: "This act is effective on passage and approval." Approved March 31, 1981.

72-16-314. Probate code allowances and exemptions not in addition to tax exemptions. The allowances and exempt property provided for in 72-2-801 through 72-2-803 are to be included in computing the exemptions from inheritance tax provided for in 72-16-313 and are not in addition to such inheritance tax exemptions.

History: **En. 91A-2-405 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-405.**

72-16-315. Discretionary waiver of inheritance tax of surviving spouse. Notwithstanding any provision of law or statute in conflict herewith, the department of revenue, in its discretion, is authorized to issue a waiver of inheritance tax in the event of the death of any person leaving any real property or personal property, or both, in joint tenancy with a surviving spouse, if the value of the property of the decedent is less than the inheritance exemption allowed by law to the surviving spouse.

History: **En. Sec. 1, Ch. 147, L. 1969; amd. Sec. 76, Ch. 391, L. 1973; R.C.M. 1947, 91-4414.1.**

72-16-316. Exemption of tangible personal property subject to tax in state of location — reciprocity. No tax may be imposed upon any tangible personal property of a resident decedent when such property is located without this state and when the transfer of such property is subject to an inheritance or transfer tax in the state where located and the tax has actually been paid, secured, or guaranteed; provided such property is not without this state temporarily or for the sole purpose of deposit or safekeeping and provided the laws of the state where such property is located allow a like exemption in relation to such property left by a resident of that state and located in this state.

History: **En. Sec. 4, Ch. 65, L. 1923; re-en. Sec. 10400.4, R.C.M. 1935; amd. Sec. 1, Ch. 105, L. 1953; amd. Sec. 1, Ch. 218, L. 1963; amd. Sec. 1, Ch. 244, L. 1965; amd. Sec. 1, Ch. 343, L. 1969;**

amd. Sec. 1, Ch. 317, L. 1973; amd. Sec. 1, Ch. 195, L. 1974; amd. Sec. 11, Ch. 263, L. 1975; amd. Sec. 4, Ch. 490, L. 1977; R.C.M. 1947, 91-4414(7).

72-16-317. Credit allowance on inheritance taxes paid to other states. The tax imposed by this part and part 9 shall, as to a resident of the state of Montana who died domiciled in Montana, be credited with the amount of any valid inheritance, estate, legacy, or succession taxes actually paid to any state or territory of the United States (other than the state of Montana) or to the District of Columbia. However, the amount to be so credited shall in no event exceed that amount which the resident decedent was taxed on that property in Montana.

History: En. Sec. 1, Ch. 236, L. 1943; R.C.M. 1947, 91-4412.

72-16-318. Child's credit for tax paid by decedent's spouse. Any child of a decedent is entitled to credit for so much of the tax paid by the decedent's spouse as applied to any property which is thereafter transferred by or from such spouse to the child, provided the spouse does not survive the decedent to exceed 10 years.

History: En. Sec. 4, Ch. 65, L. 1923; re-en. Sec. 10400.4, R.C.M. 1935; amd. Sec. 1, Ch. 105, L. 1953; amd. Sec. 1, Ch. 218, L. 1963; amd. Sec. 1, Ch. 244, L. 1965; amd. Sec. 1, Ch. 343, L. 1969; amd. Sec. 1, Ch. 317, L. 1973; amd. Sec. 1, Ch. 195, L. 1974; amd. Sec. 11, Ch. 263, L. 1975; amd. Sec. 4, Ch. 490, L. 1977; R.C.M. 1947, 91-4414(5).

72-16-319. Exemption — transfer of the estate of member of armed forces dying from combat wounds. (1) The taxes imposed in 72-16-301 and 72-16-904 do not apply to the transfer of property owned by a resident of the United States dying while in active service as a member of the armed services of the United States, if such decedent:

(a) was killed in action while serving in a combat zone, as determined under section 112(c) of the Internal Revenue Code of 1954, as amended; or

(b) died as a result of wounds, disease, or injury suffered while serving in a combat zone and while in the line of duty, by reason of a hazard to which he was subjected as an incident of such service.

(2) The transfer of property from such a decedent to any person, association, or corporation is exempt from inheritance and estate taxes imposed in this chapter.

History: En. Sec. 1, Ch. 673, L. 1979.

72-16-320 reserved.

72-16-321. Primary rates — amount remaining after exemptions not in excess of twenty-five thousand dollars. The exemptions allowed by 72-16-311 through 72-16-316 shall be subtracted from the total value of property or beneficial interests transferred to any person, institution, association, corporation, or political entity by the decedent. A tax is imposed upon the first $25,000 in value of the remaining amount of the total value of property or beneficial interests at the following rates:

(1) at the rate of 2% of the clear value of the interest in property passing to a person if the person entitled to any beneficial interest in such property is the lineal ancestor of the decedent;

(2) at the rate of 4% of the clear value of the interest in property passing to a person if the person entitled to any beneficial interest in such property is:

(a) the brother or sister or a descendant of a brother or sister of the decedent;

(b) a wife of a son or the husband of a daughter of the decedent;

(3) at the rate of 6% of the clear value of the interest in property passing to a person if the person entitled to any beneficial interest in such property is the uncle, aunt, or first cousin of the decedent;

(4) at the rate of 8% of the clear value of the interest in property passing if the entity entitled to any beneficial interest in such property is:

(a) a person in any other degree of collateral consanguinity than is hereinbefore stated;

(b) a stranger in blood to the decedent; or

(c) a body politic or corporate.

History: **En. Sec. 2, Ch. 65, L. 1923; amd. Sec. 1, Ch. 48, Ex. L. 1933; re-en. Sec. 10400.2, R.C.M. 1935; amd. Sec. 2, Ch. 490, L. 1977; R.C.M. 1947, 91-4409; amd. Sec. 2, Ch. 696, L. 1979; amd. Sec. 2, Ch. 202, L. 1981.**

Compiler's Comments

1981 Amendment: At the end of (1), substituted "the lineal ancestor of the decedent" for "(a) the lineal issue or lineal ancestor of the decedent;

(b) any child adopted as such in conformity with law or any child to whom such decedent for not less than 10 years prior to such transfer stood in the mutually acknowledged relation of a parent, provided such relationship began at or before the child's 15th birthday and was continuous for 10 years; or

(c) any lineal issue of such adopted or mutually acknowledged child".

Oversight Committee Bill: Chapter 202, L. 1981 (SB 255), was introduced at the request of the Revenue Oversight Committee. See committee report entitled "Revenue Oversight Committee: Miscellaneous Studies", Legislative Council, 1980.

Applicability: Section 3, Ch. 202, L. 1981, provided: "This act applies to estates of decedents who died after December 31, 1980."

Effective Date: Section 4, Ch. 202, L. 1981, provided: "This act is effective on passage and approval." Approved March 31, 1981.

72-16-322. Other rates — amount remaining after exemptions in excess of twenty-five thousand dollars. The rates in 72-16-321 are for convenience termed the primary rates. When the amount of the clear value of the remaining amount of the property or interests exceeds $25,000, the rate of tax upon such excess shall be as follows:

(1) upon all in excess of $25,000 and up to $50,000, two times the primary rate;

(2) upon all in excess of $50,000 and up to $100,000, three times the primary rate;

(3) upon all in excess of $100,000, four times the primary rate.

History: **En. Sec. 3, Ch. 65, L. 1923; amd. Sec. 1, Ch. 141, L. 1927; amd. Sec. 2, Ch. 48, Ex. L. 1933; re-en. Sec. 10400.3, R.C.M. 1935; amd. Sec. 3, Ch. 490, L. 1977; R.C.M. 1947, 91-4410.**

72-16-323 through 72-16-330 reserved.

72-16-331. Definitions for alternate valuation purposes. As used in 72-16-331 through 72-16-342, the following definitions apply:

(1) "Adjusted value" means:

(a) in the case of a gross estate, the gross value of all transfers subject to the tax imposed by this part, determined without regard to 72-16-331 through 72-16-342, reduced by the amount of unpaid mortgages and indebtedness;

(b) in the case of real or personal property, the value of the property for the purposes of this part, determined without regard to 72-16-331 through 72-16-342, reduced by the amount of unpaid mortgages and indebtedness.

(2) "Agreement" means a written agreement signed by each person in being who has an interest, whether or not he is in possession, in any property designated in such agreement consenting to the application of 72-16-333 with respect to such property.

(3) "Department" means the department of revenue.

(4) "Farm" means truck farms, ranches, nurseries, ranges, greenhouses, orchards, woodlands, or structures used primarily for raising agricultural or horticultural commodities. The term includes stock, dairy animals, poultry, fur-bearing animals, and fruit.

(5) "Farming purposes" means:

(a) cultivating the soil or raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and managing of animals on a farm;

(b) handling, drying, packing, grading, or storing on a farm any agricultural or horticultural commodity in its unmanufactured state, but only if the owner, tenant, or operator of the farm regularly produces more than one-half of the commodity so treated; or

(c) (i) planting, cultivating, caring for, or cutting trees; or

(ii) preparing, other than milling, trees for market.

(6) "Internal Revenue Code" means the Internal Revenue Code of 1954. A reference to a specific section of that code is a reference to that section as it may be labeled or amended.

(7) "Involuntary conversion" means a compulsory or involuntary conversion within the meaning of section 1033 of the Internal Revenue Code.

(8) "Material participation" is determined in a manner similar to the manner used for the purposes of section 1402(a)(1) of the Internal Revenue Code.

(9) "Member of the family" means, with respect to any individual, only the individual's ancestor or lineal descendant, a lineal descendant of a grandparent of the individual, the spouse of the individual, or the spouse of any such descendant. For purposes of the preceding sentence, a legally adopted child of an individual is treated as a child of the individual by blood.

(10) "Qualified heir" means, with respect to any property, a member of the decedent's family who acquired the property or to whom the property passed from the decedent. If a qualified heir disposes of any interest in qualified real property to any member of his family, such member shall thereafter be treated as the qualified heir with respect to such interest.

(11) "Qualified real property" means real property located in this state that was acquired from or passed from the decedent to a qualified heir of the decedent and that on the date of the decedent's death was being used for a qualified use, but only if:

(a) 50% or more of the adjusted value of the gross estate consists of the adjusted value of real or personal property that:

(i) on the date of the decedent's death was being used for a qualified use; and

(ii) was acquired from or passed from the decedent to a qualified heir of the decedent;

(b) 25% or more of the adjusted value of the gross estate consists of the adjusted value of real property that meets the requirements of (a)(ii) and (c) of this subsection;

(c) during the 8-year period ending on the date of the decedent's death there have been periods aggregating 5 years or more during which:

(i) the real property was owned by the decedent or a member of the decedent's family and used for a qualified use; and

(ii) there was material participation by the decedent or a member of the decedent's family in the operation of the farm or other business; and

(d) the real property is designated in the agreement referred to in subsection (2) of this section.

(12) (a) "Qualified replacement property" means:

(i) in the case of an involuntary conversion as described in section 1033(a)(1) of the Internal Revenue Code, any real property into which the real property is converted;

(ii) in the case of an involuntary conversion as described in section 1033(a)(2) of the Internal Revenue Code, any real property purchased by the qualified heir during the period specified in section 1033(a)(2)(B) of the Internal Revenue Code for the purpose of replacing the qualified real property.

(b) "Qualified replacement property" only includes property that is to be used for the qualified use set forth in (a) or (b) of subsection (13) of this section under which the qualified real property qualified under 72-16-333.

(13) (a) "Qualified use" means devotion of the property to any of the following:

(i) use as a farm for farming purposes; or

(ii) use in a trade or business other than the trade or business of farming.

(b) In the case of real property that meets the requirements of subsection (11)(c), residential buildings and related improvements on the real property occupied on a regular basis by the owner or lessee of the real property or by persons employed by the owner or lessee for the purpose of operating or maintaining the real property, and roads, buildings, and other structures and improvements functionally related to the qualified use shall be treated as real property devoted to the qualified use.

History: En. Sec. 1, Ch. 705, L. 1979; amd. Sec. 185, Ch. 575, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "72-16-333" for "72-16-338" in (2); made minor changes in punctuation.

72-16-332. Property acquired from decedent defined. Property is considered to have been acquired from the decedent if the property:

(1) is so considered under section 1014(b) of the Internal Revenue Code;

(2) is acquired by any person from the estate in satisfaction of the right of such person to a pecuniary request; or

(3) is acquired by any person from a trust in satisfaction of a right, which such person has by reason of the death of the decedent, to receive from the trust a specific dollar amount that is the equivalent of a pecuniary request.

History: **En. Sec. 9, Ch. 705, L. 1979.**

72-16-333. Alternate valuation of certain farm or business real property — limitation. (1) If the decedent was at the time of his death a resident of this state and the personal representative elects to have 72-16-331 through 72-16-342 apply and files an agreement with the department, the value of qualified real property for the purposes of the tax imposed by this part is its value for the use under which it qualifies under 72-16-331(11) as qualified real property.

(2) The aggregate decrease in the value of qualified real property taken into account for the purposes of the Montana inheritance tax that results from the application of (1) of this section may not exceed $500,000.

History: **En. Sec. 2, Ch. 705, L. 1979.**

72-16-334. Election of alternate valuation. An election for valuation under 72-16-331 through 72-16-342 must be made within 18 months of the date of the decedent's death and must be made in such manner as the department may prescribe.

History: **En. Sec. 3, Ch. 705, L. 1979.**

72-16-335. Valuation of farms. (1) Except as provided in (2) of this section, the value of a farm for farming purposes is determined by dividing the excess of the average annual gross cash rental for comparable land used for farming purposes and located in the locality of the farm over the average annual state and local real estate taxes for comparable land by the average annual effective interest rate for all new federal land bank loans. For purposes of the preceding sentence, each average annual computation must be made on the basis of the 5 most recent calendar years ending before the date of the decedent's death.

(2) The formula in (1) of this section may not be used:

(a) if it is established that there is no comparable land from which the average annual gross cash rental may be determined; or

(b) if the personal representative elects to have the value of the farm for farming purposes determined under 72-16-336.

History: **En. Sec. 4, Ch. 705, L. 1979.**

72-16-336. Valuation of closely held business interests. If 72-16-335 does not apply, the following factors apply in determining the value of any qualified real property:

(1) The capitalization of income that the property can be expected to yield for farming or closely held business purposes over a reasonable period of time under prudent management using traditional cropping patterns for the area, taking into account soil capacity, terrain configuration, and similar factors;

(2) the capitalization of the fair rental value of the land for farmland or closely held business purposes;

(3) assessed land values;

(4) comparable sales of other farm or closely held business land in the same geographical area far enough removed from a metropolitan or resort area so that nonagricultural use is not a significant factor in the sales price; and

(5) any other factor that fairly values the farm or closely held business value of the property.

History: **En. Sec. 5, Ch. 705, L. 1979.**

72-16-337. Application to certain business interests — department rules. The department shall prescribe regulations setting forth the application of 72-16-331 through 72-16-342 in the case of an interest in a partnership, corporation, or trust that, with respect to the decedent, is an interest in a closely held business within the meaning of 72-16-453.

History: **En. Sec. 11, Ch. 705, L. 1979.**

72-16-338. Disposition or failure to use for qualified use — additional tax. (1) There is hereby imposed an additional inheritance tax if within 15 years after the decedent's death and before the death of the qualified heir:

(a) the qualified heir disposes of any interest in qualified real property other than by a disposition to a member of his family; or

(b) the qualified heir ceases to use for the qualified use the qualified real property which was acquired or passed from the decedent.

(2) The amount of additional tax imposed by (1) of this section with respect to any interest is the amount equal to the lesser of:

(a) the adjusted tax difference attributable to such interest; or

(b) the excess of the amount realized with respect to the interest or in any case other than a sale or exchange at arm's length, the fair market value of the interest over the value of the interest determined under 72-16-333.

(3) For the purposes of (2) of this section, the adjusted tax difference attributable to an interest is the amount that bears the same ratio to the adjusted tax difference with respect to the estate as determined under (4) of this section as the excess of the value of such interest for purposes of the Montana inheritance tax, determined without regard to 72-16-331 through 72-16-342, over the value of such interest determined under 72-16-333 bears to a similar excess determined for all qualified real property.

(4) For the purposes of (3) of this section, "adjusted tax difference with respect to the estate" means the excess of what would have been the tax liability but for 72-16-333 over the tax liability. For the purposes of this subsection, "tax liability" means the tax imposed by Title 72, chapter 16.

(5) For the purposes of this section, if the qualified heir disposes of a portion of the interest acquired by or passing to such heir or a predecessor qualified heir, or there is a cessation of use of such a portion, the value determined under 72-16-333 taken into account under (2)(b) of this section with respect to such portion shall be its pro rata share of the value of the interest and the adjusted tax difference attributable to the interest taken into account with respect to the transaction involving the second or any succeeding portion shall be reduced by the amount of the tax imposed by this section with respect to all prior transactions involving portions of the interest.

(6) If the date of the disposition or cessation occurs more than 120 months and less than 180 months after the date of the death of the decedent, the amount of the tax imposed by this section shall be reduced, but not below zero, by an amount determined by multiplying the amount of the tax determined without regard to this subsection, by a fraction in which the numerator is the number of full months after the death in excess of 120 and the denominator is 60.

(7) In the case of an interest acquired from or passing from any decedent, if (a) or (b) of subsection (1) of this section applies to any portion of an interest, (b) or (a) of subsection (1) of this section, as the case may be, does not apply with respect to the same portion of the interest.

(8) The additional tax imposed by this section is due on the day that is 6 months after the date of the disposition or cessation.

(9) The qualified heir is personally liable for the additional tax with respect to his interest unless the heir has furnished bond that meets the requirements of 72-16-340.

History: **En. Sec. 7, Ch. 705, L. 1979.**

72-16-339. When cessation of qualified use occurs. For the purposes of 72-16-338, real property ceases to be used for the qualified use if:

(1) the property ceases to be used for the qualified use set forth in 72-16-331 under which the property qualified under 72-16-331; or

(2) during any period of 8 years ending after the date of the decedent's death and before the date of the death of the qualified heir, there had been periods aggregating 3 years or more during which:

(a) in the case of periods during which the property was held by the decedent, there was no material participation by the decedent or any member of his family in the operation of the farm or other business; and

(b) in the case of periods during which the property was held by any qualified heir, there was no material participation by such qualified heir or any member of his family in the operation of the farm or other business.

History: **En. Sec. 8, Ch. 705, L. 1979.**

72-16-340. Notice to heir of additional tax — bond in lieu of personal liability. (1) If the qualified heir makes written application to the department for the determination of the additional tax that may be imposed by 72-16-338 with respect to the qualified heir's interest, the department must, as soon as possible and in any event within 1 year after the making of the application, notify the heir of the maximum amount.

(2) The qualified heir, on furnishing a bond in such amount and for such period as may be required, is discharged from personal liability for any additional tax imposed by 72-16-338 and is entitled to a receipt or writing showing such discharge.

History: **En. Sec. 10, Ch. 705, L. 1979.**

72-16-341. Involuntary conversion of qualified real property. (1) If there is an involuntary conversion of an interest in qualified real property and the qualified heir makes an election under this section, no tax is imposed by 72-16-338 on the conversion if the cost of the qualified replacement property equals or exceeds the amount realized on the conversion.

(2) If (1) of this section does not apply, the tax imposed by 72-16-338, with respect to any involuntary conversion, is the amount of tax that, but for this subsection, would have been imposed on the conversion reduced by an amount that bears the same ratio to such tax as the cost of the qualified replacement property bears to the amount realized on the conversion.

(3) (a) For the purposes of 72-16-338, any qualified replacement property shall be treated in the same manner as if it were a portion of the interest in qualified real property that was involuntarily converted, except that with respect to such qualified replacement property:

(i) the 15-year period under 72-16-338 shall be extended by any period, beyond the 2-year period referred to in section 1033(a)(2)(B)(i) of the Internal Revenue Code, during which the qualified heir was allowed to replace the qualified real property; and

(ii) the phaseout period under 72-16-338(6) shall be appropriately adjusted to take into account the extension referred to in (a)(i) of this subsection.

(b) Any tax imposed by 72-16-338 on the involuntary conversion shall be treated as a tax imposed on a partial disposition. The provisions of 72-16-339 shall be applied by not taking into account periods after the involuntary conversion and before the acquisition of the qualified replacement property and by treating material participation with respect to the converted property as material participation with respect to the qualified replacement property.

(4) The rules of the last sentence of section 1033(a)(2)(B) of the Internal Revenue Code apply for the purposes of 72-16-331(12)(a)(ii).

(5) An election under this section may be made at such time and in such manner as prescribed by the department.

History: **En. Sec. 12, Ch. 705, L. 1979.**

72-16-342. Time limitations on assessment of additional tax. (1) If qualified real property is disposed of or ceases to be used for a qualified use, the statutory period for the assessment of any additional tax under 72-16-338 attributable to disposition or cessation may not expire until 3 years after the date the department is notified, in a manner to be prescribed by the department, of the disposition or cessation.

(2) The additional tax may be assessed before the expiration of the 3-year period referred to in (1) of this section, notwithstanding the provisions of any other law or rule of law that would otherwise prevent such assessment.

History: **En. Sec. 6, Ch. 705, L. 1979.**

Part 4

Determination and Payment of Tax

72-16-401. Application for determination of tax by department — information, documents to be furnished to department. (1) The personal representative or, should the personal representative fail to do so, any interested person shall make application to the department of revenue for determination of any tax due upon the estate of a decedent.

(2) The applicant shall furnish to the department the inventory and appraisement required by 72-3-607 and any supplemental inventory under

72-3-609, together with a statement under oath or affirmation of any property owned by the decedent at the time of his death situated outside of this state and without its jurisdiction. The applicant shall, upon request of the department, furnish the department with the final accounting of such personal representative. If the decedent died testate, the personal representative shall likewise furnish the department with a certified copy of the last will of the decedent. If the decedent died intestate, the personal representative shall provide the department with a sworn statement setting forth the names, ages, and residences of the heirs at law of decedent. In all cases, the personal representative shall set forth the proportion of the entire estate inherited by or devised to each of said persons and the relation, if any, which each devisee, heir, or transferee sustained to the decedent or person from whom the transfer was made.

(3) The information so provided shall not be binding upon the department in case it believes the same to be erroneous or untrue.

History: En. 91-4468 by Sec. 4, Ch. 365, L. 1974; amd. Sec. 9, Ch. 516, L. 1975; R.C.M. 1947, 91-4468(part).

72-16-402. Department to determine tax. From the information so furnished the department of revenue and such other information as it may be able to obtain with reference thereto, the department shall with reasonable diligence proceed to ascertain and determine the amount of tax, if any, due under the provisions of the inheritance tax laws of the state of Montana, and a copy of such determination shall be mailed to the personal representative and to the clerk of the appropriate district court. If no tax is due, the department shall likewise so inform the clerk of district court and the personal representative.

History: En. 91-4468 by Sec. 4, Ch. 365, L. 1974; amd. Sec. 9, Ch. 516, L. 1975; R.C.M. 1947, 91-4468(part).

72-16-403. Appeal of department's determination — notice — determination by court. (1) Should the personal representative or any person affected by the determination of inheritance tax feel aggrieved by the department of revenue's determination, he may, within 60 days after the filing of the copy of such determination with the clerk of district court, appeal the determination to the appropriate district court by serving upon the department his objections to such determination and by filing such notice after so serving the same in the office of the clerk of such court.

(2) The court shall set a day for hearing such appeal upon 10 days' notice to all interested parties and at the time and place set shall hear the appeal upon all papers and records which may be properly presented before it and shall as soon as possible thereafter issue its order determining the amount of such inheritance tax, if it finds a tax to be due.

History: En. 91-4468 by Sec. 4, Ch. 365, L. 1974; amd. Sec. 9, Ch. 516, L. 1975; R.C.M. 1947, 91-4468(part).

72-16-404 through 72-16-410 reserved.

72-16-411. Special appraiser — appointment. The district court, upon the application of any interested party, including the department of revenue, shall appoint a competent person as special appraiser to fix the fair market value at the time of the transfer thereof of the property of persons whose estate shall be subject to the payment of any tax imposed by parts 1 through 8.

History: En. Sec. 13, Ch. 65, L. 1923; amd. Sec. 2, Ch. 141, L. 1927; re-en. Sec. 10400.17, R.C.M. 1935; amd. Sec. 84, Ch. 391, L. 1973; R.C.M. 1947, 91-4427.

72-16-412. Powers and duties of appraiser. (1) Every such appraiser shall forthwith give notice by mail to all persons known to have a claim or interest in the property to be appraised, including the department of revenue, and to such persons as the district court may by order direct of the time and place when he will appraise such property.

(2) He shall, at such time and place, appraise the same at its fair market value, as herein prescribed; and for that purpose the appraiser is authorized to issue subpoenas and to compel the attendance of witnesses before him and to take the evidence of such witnesses under oath concerning such property and the value thereof. He shall make report thereof and of such value in writing to the district court, together with the depositions of the witnesses examined and such other facts in relation thereto and to the matter as the district court may order or require.

(3) The report of the special appraiser shall be made in triplicate, and not less than 10 days before the hearing thereon one of said triplicates shall be filed in the office of the district court, one to the administrator or the executor, and the other shall be mailed to the department.

History: (1), (2)En. Sec. 14, Ch. 65, L. 1923; amd. Sec. 4, Ch. 150, L. 1925; re-en. Sec. 10400.18, R.C.M. 1935; amd. Sec. 85, Ch. 391, L. 1973; Sec. 91-4428, R.C.M. 1947; (3)En. Sec. 15, Ch. 65, L. 1923; amd. Sec. 5, Ch. 150, L. 1925; amd. Sec. 3, Ch. 141, L. 1927; re-en. Sec. 10400.19, R.C.M. 1935; amd. Sec. 86, Ch. 391, L. 1973; Sec. 91-4429, R.C.M. 1947; R.C.M. 1947, 91-4428(part), 91-4429(part).

72-16-413. Compensation and expenses of appraiser and witnesses. Every appraiser shall be paid on the certificate of the district court at the rate of not to exceed $10 per day for every day actually and necessarily employed in such appraisal and shall receive his actual and necessary traveling expenses, and witnesses shall be allowed the same fees as are allowed witnesses in civil actions in courts of record and the same shall be paid by the executor, administrator, or trustee of such estate in the same manner as provided for the payment of other administration expenses.

History: En. Sec. 14, Ch. 65, L. 1923; amd. Sec. 4, Ch. 150, L. 1925; re-en. Sec. 10400.18, R.C.M. 1935; amd. Sec. 85, Ch. 391, L. 1973; R.C.M. 1947, 91-4428(part).

72-16-414. Appraisal to be at clear market value at time of death. Whenever a transfer of property is made upon which there is or in any contingency there may be a tax imposed, such property shall be appraised at its clear market value existing at the date of death of the transferor, which appraisement shall be made as soon thereafter as practicable.

History: En. Sec. 15, Ch. 65, L. 1923; amd. Sec. 5, Ch. 150, L. 1925; amd. Sec. 3, Ch. 141, L. 1927; re-en. Sec. 10400.22, R.C.M. 1935; amd. Secs. 1 and 2, Ch. 101, L. 1947; R.C.M. 1947, 91-4432(part).

72-16-415. Hearing by court. At the time and place of hearing the administration account, the district court shall examine the report of the special appraiser and from the report and other proofs relating to any such estate shall forthwith determine the cash value of such estate and the amount of tax to which the same is liable; or the district court, without appointing such appraiser, may at the time so fixed hear the evidence and determine the cash value of such estate and the amount of tax to which the same is liable.

History: En. Sec. 15, Ch. 65, L. 1923; amd. Sec. 5, Ch. 150, L. 1925; amd. Sec. 3, Ch. 141, L. 1927; re-en. Sec. 10400.19, R.C.M. 1935; amd. Sec. 86, Ch. 391, L. 1973; R.C.M. 1947, 91-4429(part).

72-16-416. Notice of hearing — application for exclusion to accompany notice. (1) Notice of such hearing to determine the inheritance tax shall be given in the manner and for the time provided in 72-1-301 to all interested persons and to the department of revenue.

(2) A copy of the application for exclusion of any property to avoid inheritance tax thereon shall be given with notice of hearing thereof, and notice of any such hearing shall be mailed to the department not less than 15 days before such hearing upon notice forms provided by the department and containing such information as it may require.

History: En. Sec. 15, Ch. 65, L. 1923; amd. Sec. 5, Ch. 150, L. 1925; amd. Sec. 3, Ch. 141, L. 1927; re-en. Sec. 10400.20, R.C.M. 1935; amd. Sec. 1, Ch. 80, L. 1949; amd. Sec. 87, Ch. 391, L. 1973; amd. Sec. 7, Ch. 365, L. 1974; R.C.M. 1947, 91-4430.

72-16-417. Future, contingent, or limited estates — duty of insurance commissioner — method of valuation. (1) The commissioner of insurance shall, on application of any district court or of the department of revenue, determine the value of any such future or contingent estates, income, or interests therein limited, contingent, dependent, or determinable upon the life or lives of the person or persons in being, upon the facts contained in the district court's finding and determination and contained in such special appraiser's report, and upon the facts certify the same to the district court or to the department, and his certificate shall be presumptive evidence that the method of computation adopted therein is correct.

(2) The value of every future or limited estate, income, interest, or annuity dependent upon any life or lives in being shall be determined by the rule, method, and standard of mortality and value employed by the commissioner of insurance of the state of Montana in ascertaining the value of policies of life insurance and annuities for the determination of liabilities of life insurance companies, except that the rate of interest for making such computation shall be 5% per annum. The tax so determined shall be construed to be upon the transfer of a proportion of the principal or corpus of the estate equal to the present value of such future or limited estate, income, interest, or annuity and not upon any earnings or income of said property produced after death.

(3) Such tax shall be due and payable forthwith, except as otherwise provided in parts 1 through 8.

History: (1)En. Sec. 15, Ch. 65, L. 1923; amd. Sec. 5, Ch. 150, L. 1925; amd. Sec. 3, Ch. 141, L. 1927; re-en. Sec. 10400.21, R.C.M. 1935; amd. Sec. 88, Ch. 391, L. 1973; Sec. 91-4431, R.C.M. 1947; (2), (3)En. Sec. 15, Ch. 65, L. 1923; amd. Sec. 5, Ch. 150, L. 1925; amd. Sec. 3, Ch. 141, L. 1927; re-en. Sec. 10400.22, R.C.M. 1935; amd. Secs. 1 and 2, Ch. 101, L. 1947; Sec. 91-4432, R.C.M. 1947; R.C.M. 1947, 91-4431, 91-4432(part).

72-16-418. Contingent encumbrances — no allowance for — return if takes effect. (1) In estimating the value of any estate or interest in property to the beneficial enjoyment or possession whereof there are persons or corporations presently entitled thereto, no allowance shall be made in respect of any contingent encumbrance thereon or in respect of any contingency upon the happening of which the estate or property or some part thereof or interest therein might be abridged, defeated, or diminished.

(2) In the event of such encumbrance taking effect as an actual burden upon the interest of the beneficiary or in the event of the abridgment, defeat, or diminution of such estate or property or interest therein as aforesaid, a return shall be made to the person properly entitled thereto of a proportionate amount of such tax in respect of the amount or value of the encumbrance when taking effect or so much as will reduce the same to the amount which would have been assessed in respect to the actual duration or extent of the estate or interest enjoyed. Such return of tax shall be made in the manner provided in 72-16-439 and 72-16-442.

History: En. Sec. 15, Ch. 65, L. 1923; amd. Sec. 5, Ch. 150, L. 1925; amd. Sec. 3, Ch. 141, L. 1927; re-en. Sec. 10400.23, R.C.M. 1935; R.C.M. 1947, 91-4433.

72-16-419. Tax payable forthwith on contingent estate — lowest rate. When property is transferred in trust or otherwise and the rights, interests, or estates of the transferees are dependent upon contingencies or conditions whereby they may be wholly or in part created, defeated, extended, or abridged, a tax shall be imposed upon such transfer at the lowest rate which, on the happening of any of the contingencies or conditions, would be possible under the provisions of parts 1 through 8, and such tax so imposed shall be due and payable forthwith out of the property transferred. However, on the happening of any contingency or condition whereby the property or any part thereof is transferred to a person or corporation which under the provisions of parts 1 through 8 is required to pay a tax at a higher rate than the tax imposed, then such transferee shall pay the difference between the tax imposed and the tax at the higher rate, and the amount of such increased tax shall be enforced and collected as provided in parts 1 through 8.

History: En. Sec. 15, Ch. 65, L. 1923; amd. Sec. 5, Ch. 150, L. 1925; amd. Sec. 3, Ch. 141, L. 1927; re-en. Sec. 10400.25, R.C.M. 1935; R.C.M. 1947, 91-4435.

72-16-420. Estate for life or years subject to divesting — how taxed. Where an estate for life or for years can be divested by the act or omission of the legatee or devisee, it shall be taxed as if there were no possibility of such divesting.

History: En. Sec. 15, Ch. 65, L. 1923; amd. Sec. 5, Ch. 150, L. 1925; amd. Sec. 3, Ch. 141, L. 1927; re-en. Sec. 10400.26, R.C.M. 1935; R.C.M. 1947, 91-4436(part).

72-16-421. Appraisal of contingent or defeasible estate when tax postponed. Estates in expectancy which are contingent or defeasible and in which proceedings for determination of the tax have not been taken or where the taxation thereof has been held in abeyance shall be appraised at their full undiminished clear value when the person entitled thereto shall come into the beneficial enjoyment or possession thereof without diminution for or on account of any valuation theretofore made of the particular estates for purposes of taxation upon which said estates in expectancy may have been limited.

History: En. Sec. 15, Ch. 65, L. 1923; amd. Sec. 5, Ch. 150, L. 1925; amd. Sec. 3, Ch. 141, L. 1927; re-en. Sec. 10400.26, R.C.M. 1935; R.C.M. 1947, 91-4436(part).

72-16-422. Court order determining tax — contents — form. (1) When the district court shall be required to make a determination of the value of any estate which is taxable under the inheritance tax laws and of the tax to which it is liable, an order shall be entered by the court determining the same, which order shall include a statement of:

(a) the date of death of the decedent;

(b) the gross value of the real and personal property of such estate, stating the principal items thereof;

(c) the deductions therefrom allowed by the court;

(d) the names and relationship of the persons entitled to receive the same, with the amount received by each;

(e) the rates and amounts of inheritance tax for which each such person is liable and the total amount of tax to be paid;

(f) the amount of interest or penalty due, if any.

(2) Such order shall be substantially in the form prescribed by the department of revenue.

History: En. Sec. 15, Ch. 65, L. 1923; amd. Sec. 5, Ch. 150, L. 1925; amd. Sec. 3, Ch. 141, L. 1927; re-en. Sec. 10400.27, R.C.M. 1935; amd. Sec. 1, Ch. 161, L. 1971; amd. Sec. 89, Ch. 391, L. 1973; amd. Sec. 8, Ch. 365, L. 1974; R.C.M. 1947, 91-4437(part).

72-16-423. Court order to be delivered and taxes paid before final judgment in estate. A copy of the court order referred to in 72-16-422 shall be delivered or mailed to the county treasurer, the administrator or executor, and the department of revenue, and no final judgment may be entered in such estates until due proof is filed with the court that such copies have been so delivered or mailed and receipts are filed with the court showing the payment of all such taxes or proof is filed showing that the permission for deferral of payment authorized by 72-16-438 has been given.

History: En. Sec. 15, Ch. 65, L. 1923; amd. Sec. 5, Ch. 150, L. 1925; amd. Sec. 3, Ch. 141, L. 1927; re-en. Sec. 10400.27, R.C.M. 1935; amd. Sec. 1, Ch. 161, L. 1971; amd. Sec. 89, Ch. 391, L. 1973; amd. Sec. 8, Ch. 365, L. 1974; R.C.M. 1947, 91-4437(part); amd. Sec. 24, Ch. 6, L. 1979.

72-16-424. Rehearing of court determination within sixty days. When an appraisement, assessment, or determination of tax is made by a district court, the attorney general, department of revenue, public administrator, county attorney, or any person dissatisfied with the appraisement or assessment and determination of such tax may apply for a rehearing thereof before the district court within 60 days from the fixing, assessing, and determination of the tax by the district court as herein provided on filing a written notice which shall state the grounds of the application for a rehearing. The rehearing shall be upon the records, proceedings, and proofs had and taken on the hearing as herein provided unless additional or newly discovered evidence be alleged therefor, and a new trial shall not be had or granted unless specially ordered by the district court.

History: En. Sec. 15, Ch. 65, L. 1923; amd. Sec. 5, Ch. 150, L. 1925; amd. Sec. 3, Ch. 141, L. 1927; re-en. Sec. 10400.28, R.C.M. 1935; amd. Sec. 90, Ch. 391, L. 1973; amd. Sec. 9, Ch. 365, L. 1974; R.C.M. 1947, 91-4438.

72-16-425. Reappraisal within one year — appointment of appraiser — procedure. (1) Within 1 year after the entry of an order or decree of the district court determining the value of an estate and assessing the tax thereon, the attorney general or the department of revenue may, if he or it believes that such appraisal, assessment, or determination has been erroneously, fraudulently, or collusively made, make application to the district judge for a reappraisal thereof.

(2) The district court to whom such application is made may thereupon appoint a competent person to reappraise such estate. Such appraiser shall possess the powers, be subject to the duties, shall give the notice, and receive the compensation provided by 72-16-412 to 72-16-425, inclusive. Such compensation shall be payable by the county treasurer out of any funds he may have on account of any tax imposed under the provisions of parts 1 through 8, upon the certificate of the district judge.

(3) The report of such appraiser shall be filed in the office of the clerk of the district court, and thereafter the same proceedings shall be taken and had by and before such district court as herein provided to be taken and had by and before the court.

(4) The determination and assessment of such district court shall supersede the former determination and assessment of such court and shall be filed in the office of the county treasurer, state treasurer, and department of revenue.

History: En. Sec. 15, Ch. 65, L. 1923; amd. Sec. 5, Ch. 150, L. 1925; amd. Sec. 3, Ch. 141, L. 1927; re-en. Sec. 10400.29, R.C.M. 1935; amd. Sec. 91, Ch. 391, L. 1973; R.C.M. 1947, 91-4439.

72-16-426 through 72-16-430 reserved.

72-16-431. Tax — when due and payable. All taxes imposed by parts 1 through 8 shall be due and payable at the time of the death of the decedent, except as hereinafter provided.

History: En. Sec. 5, Ch. 65, L. 1923; re-en. Sec. 10400.5, R.C.M. 1935; amd. Sec. 1, Ch. 16, L. 1951; amd. Sec. 1, Ch. 99, L. 1965; amd. Sec. 1, Ch. 34, L. 1971; amd. Sec. 77, Ch. 391, L. 1973; amd. Sec. 2, Ch. 424, L. 1975; R.C.M. 1947, 91-4415(part).

72-16-432. Tax lien — continuing personal liability. (1) All property which is affected by the death of the decedent and on which inheritance, estate, or death taxes are due under the laws of this state is subject to the lien of the state of Montana until such taxes have been paid. This lien follows all property sold in the course of administration or distributed under chapters 1 through 5 until such time as all inheritance taxes have been paid and a receipt showing payment thereof has been filed with the clerk of court, subject to subsection (2).

(2) Every such tax shall be and remain a lien upon the property transferred for a period of 10 years from the time of the death of the decedent, whether said death occurred before or after July 1, 1965, unless sooner paid.

(3) The person to whom the property is transferred and the personal representatives and trustees of every estate so transferred shall be personally liable for such tax until its payment.

History: (1)En. 91A-3-1010 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 8, Ch. 516,L. 1975; Sec. 91A-3-1010, R.C.M. 1947; (2), (3)En. Sec. 5, Ch. 65, L. 1923; re-en. Sec. 10400.5, R.C.M. 1935; amd. Sec. 1, Ch. 16, L. 1951; amd. Sec. 1, Ch. 99, L. 1965; amd. Sec. 1, Ch. 34, L. 1971; amd. Sec. 77,

Ch. 391, L. 1973; amd. Sec. 2, Ch. 424, L. 1975; Sec. 91-4415, R.C.M. 1947; R.C.M. 1947, 91-4415(part), 91A-3-1010(part).

72-16-433. Department consent to transfer free of lien. The department of revenue may issue a consent to transfer any real or personal property in the estate of a decedent free of the lien for unpaid inheritance taxes upon proper application and under such rules as the department shall prescribe.

History: En. 91A-3-1010 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 8, Ch. 516, L. 1975; R.C.M. 1947, 91A-3-1010(part).

72-16-434. Method of payment and receipt. (1) The tax shall be paid to the department of revenue for transmittal to the state treasurer or to the treasurer of the county in which the district court is situated having jurisdiction as herein provided or to the treasurer of the county of residence of the decedent if a court proceeding is not involved.

(2) If paid to the county treasurer said treasurer shall receipt therefor making five copies thereof and distribute said copies as follows:

(a) original receipt, to the clerk of the district court;

(b) first copy, to the personal representative, trustee, or person paying said tax;

(c) second copy, attached to and mailed with the report required by 72-16-215, as amended, to the department of revenue;

(d) third copy, to the county clerk and recorder;

(e) fourth copy, retained by the treasurer on file in his office.

(3) The copy of the receipt given to the personal representative or trustee shall be a proper voucher in the settlement of his accounts.

History: En. Sec. 5, Ch. 65, L. 1923; re-en. Sec. 10400.5, R.C.M. 1935; amd. Sec. 1, Ch. 16, L. 1951; amd. Sec. 1, Ch. 99, L. 1965; amd. Sec. 1, Ch. 34, L. 1971; amd. Sec. 77, Ch. 391, L. 1973; amd. Sec. 2, Ch. 424, L. 1975; R.C.M. 1947, 91-4415(part).

72-16-435. Receipts — form and contents — recording. (1) Any person shall be entitled to a receipt from the county treasurer of any county or the state treasurer or, at his option, to a copy of a receipt that may have been given by such county treasurer or state treasurer for the payment of any tax under parts 1 through 8, under the official seal of such county treasurer or state treasurer, which receipt shall designate upon whose estate such tax shall have been paid, by whom, and whether in full of such tax.

(2) Such receipt may be recorded in the office of the county recorder of the county in which such estate is situate in a book to be kept by him for that purpose, which shall be labeled "transfer tax".

History: En. Sec. 21, Ch. 65, L. 1923; re-en. Sec. 10400.42, R.C.M. 1935; R.C.M. 1947, 91-4452.

72-16-436. Powers and duties of representative in collection and payment of tax. (1) Every personal representative shall have full power to sell so much of the property of the decedent as will enable him to pay such tax in the same manner as he might be entitled by law to do for the payment of the debts of the testator or intestate. Any such personal representative having in charge or in trust any property for distribution subject to such tax shall deduct the tax therefrom and within 30 days therefrom shall pay over the same to the county treasurer, as herein provided.

(2) If such property be not in money, he shall collect the tax thereon upon the appraised value thereof from the person entitled thereto. He shall not deliver or be compelled to deliver any specific property subject to tax under this law to any person until he shall have collected the tax thereon. If any such devise shall be charged upon or payable out of real property, the heir or devisee shall deduct such tax therefrom and pay it to the personal representative, and the tax shall remain a lien or charge on such real property for the period provided in 72-16-432, and the payment thereof shall be enforced by the personal representative in the same manner that payment of the devise might be enforced or by the attorney general under 72-16-443. If any such devise shall be given in money to any such person for a limited period, the personal representative shall retain the tax upon the whole amount, but if it be not in money and agreement as to apportionment cannot be reached by him with the devisee or devisees affected, he shall make application to the appropriate court to make an apportionment, if the case require it, of the sum to be paid into the hands of such devisees and for such further order relative thereto as the case may require, such application being treated as a supervised proceeding.

History: **En. Sec. 7, Ch. 65, L. 1923; re-en. Sec. 10400.7, R.C.M. 1935; amd. Sec. 2, Ch. 99, L. 1965; amd. Sec. 5, Ch. 365, L. 1974; R.C.M. 1947, 91-4417.**

72-16-437. Personal representative not entitled to closing unless tax paid or bond filed. No personal representative or trustee is entitled to a final accounting of an estate in settlement of which a tax is due under the provisions of parts 1 through 8 unless he produces such receipt or a certified copy thereof or unless permission for deferral of payment has been granted as provided in 72-16-438.

History: **En. Sec. 5, Ch. 65, L. 1923; re-en. Sec. 10400.5, R.C.M. 1935; amd. Sec. 1, Ch. 16, L. 1951; amd. Sec. 1, Ch. 99, L. 1965; amd. Sec. 1, Ch. 34, L. 1971; amd. Sec. 77, Ch. 391, L. 1973; amd. Sec. 2, Ch. 424, L. 1975; R.C.M. 1947, 91-4415(part); amd. Sec. 25, Ch. 6, L. 1979.**

72-16-438. Permission for deferred payment of tax. Any beneficiary of any property chargeable with a tax under 72-16-301 through 72-16-304 and 72-16-307 and any personal representative or trustee of the estate may request, within 18 months from the date of the death of decedent or transfer of the property, permission not to pay such tax or a portion thereof until the person beneficially interested comes into the actual possession or enjoyment thereof or until payment can be made without liquidating a portion of the capital assets. The department may permit the deferral of payment for not more than 5 years, upon such conditions and terms as the department considers necessary to assure payment.

History: **En. Sec. 9, Ch. 65, L. 1923; re-en. Sec. 10400.9, R.C.M. 1935; amd. Sec. 79, Ch. 391, L. 1973; amd. Sec. 6, Ch. 490, L. 1977; R.C.M. 1947, 91-4419.**

72-16-439. Advance payment — relief from interest or penalty — discount — refund of excess paid. (1) Any person from whom such tax is or may be due may make an estimate of and pay the same to the county treasurer, who shall receipt therefor, at any time before the same is determined by the department of revenue and shall thereupon be relieved from any interest or penalty upon the amount so paid in the same manner as if the tax were then determined.

(2) In the event the person making payment has done so in accordance with the provisions of 72-16-440 pertaining to the allowance of a 5% discount, the person making payment shall be relieved from any interest or penalty and shall be allowed the 5% discount upon the amount which he so declared due as his inheritance tax liability. The tax may be declared to be due by paying the amount estimated by the taxpayer to the county treasurer.

(3) The money shall be paid to the county treasurer who must deposit same with the department of revenue. The county treasurer shall pay the collections to the department on or before the fifth day of the month following the collection.

(4) As soon as the correct amount of inheritance tax has been determined, any excess so paid shall be refunded to the person so paying or entitled thereto by the department.

History: En. Sec. 8, Ch. 65, L. 1923; amd. Sec. 1, Ch. 47, L. 1935; re-en. Sec. 10400.8, R.C.M. 1935; amd. Sec. 7, Ch. 126, L. 1963; amd. Sec. 2, Ch. 15, L. 1967; amd. Sec. 1, Ch. 36, L. 1971; amd. Sec. 1, Ch. 316, L. 1973; amd. Sec. 78, Ch. 391, L. 1973; amd. Sec. 3, Ch. 424, L. 1975; R.C.M. 1947, 91-4418(part).

72-16-440. Discount for prompt payment. If the tax is paid within 18 months of the death of the decedent, a discount of 5% shall be deducted therefrom. The deduction of this discount of 5% shall be accomplished by paying within the 18-month period from the date that the tax accrues an amount equal to 95% of the total tax declared due by the person making payment.

History: En. Sec. 6, Ch. 65, L. 1923; re-en. Sec. 10400.6, R.C.M. 1935; amd. Sec. 1, Ch. 15, L. 1967; amd. Sec. 5, Ch. 490, L. 1977; R.C.M. 1947, 91-4416(1).

72-16-441. Interest on overdue payments. (1) If such tax is not paid within 18 months of the death of the decedent, interest shall be charged and collected thereon at the rate of 10% a year from the time the tax accrued, unless because of claims made upon the estate, necessary litigation, or other unavoidable cause of delay the tax is not determined and paid as herein provided, in which case interest at the rate of 6% shall be charged upon such tax from the accrual thereof until the cause of such delay is removed, after which time 10% shall be charged.

(2) Litigation to defeat the payment of the tax is not necessary litigation.

(3) When permission has been granted to defer payment of tax under 72-16-438, interest shall be charged at the rate of 6% after 1 year from the date of death until the date of payment thereof.

History: En. Sec. 6, Ch. 65, L. 1923; re-en. Sec. 10400.6, R.C.M. 1935; amd. Sec. 1, Ch. 15, L. 1967; amd. Sec. 5, Ch. 490, L. 1977; R.C.M. 1947, 91-4416(2).

72-16-442. Refund of tax when debt against estate proved after distribution. If any debt shall be proved against the estate of the decedent after the payment of any legacy or distributive share thereof from which any such tax has been deducted or upon which it has been paid by the person entitled to such legacy or distributive share and such person is required by the order of the district court having jurisdiction of the tax so deducted or paid to refund the amount of such debts or any part thereof, an equitable proportion thereof shall be repaid to such person by the personal representative or trustee, if the tax has not been paid to the county treasurer or state treasurer, or by them, in the proper proportionate shares, if it has been so paid.

History: En. Sec. 8, Ch. 65, L. 1923; amd. Sec. 1, Ch. 47, L. 1935; re-en. Sec. 10400.8, R.C.M. 1935; amd. Sec. 7, Ch. 126, L. 1963; amd. Sec. 2, Ch. 15, L. 1967; amd. Sec. 1, Ch. 36, L. 1971; amd. Sec. 1, Ch. 316, L. 1973; amd. Sec. 78, Ch. 391, L. 1973; amd. Sec. 3, Ch. 424, L. 1975; R.C.M. 1947, 91-4418(part).

72-16-443. Collection of unpaid taxes. (1) If any county treasurer, the state treasurer, or the department of revenue has reason to believe that any tax is due and unpaid under the provisions of parts 1 through 8, after the refusal or neglect of any person liable therefor to pay the same, he or it shall notify the attorney general in writing of such failure or neglect; and the attorney general, if he has probable cause to believe that such tax is due and unpaid, shall apply to the district court for a citation citing the person liable to pay such tax to appear before the court on the day specified, not more than 3 months from the date of such citation, and show cause why the tax should not be paid.

(2) The judge of the district court, upon such application and whenever it appears to him that any such tax accruing under parts 1 through 8 has not been paid as required by law, shall issue such citation. The service of such citation and the time, manner, and proof thereof and the hearing and determination thereof shall conform as near as may be to the provisions of the laws governing probate practice of this state.

(3) Whenever it appears that any such tax is due and payable and the payment thereof cannot be enforced under the provisions of parts 1 through 8 in such district court, the person or corporation from whom the same is due is hereby made liable to the state for the amount of such tax; and the attorney general, in the name of the state, shall sue for and enforce the collection of such tax, and the county attorney of the county shall appear for and act on behalf of any county treasurer who is cited to appear before any district court under the provisions of parts 1 through 8.

History: En. Sec. 16, Ch. 65, L. 1923; re-en. Sec. 10400.30, R.C.M. 1935; amd. Sec. 92, Ch. 391, L. 1973; R.C.M. 1947, 91-4440; amd. Sec. 26, Ch. 6, L. 1979.

72-16-444 through 72-16-450 reserved.

72-16-451. Definitions for deferred payment purposes. As used in 72-16-451 through 72-16-465, the following definitions apply:

(1) "Adjusted gross estate" means the clear market value of the property passing by reason of a decedent's death determined under Title 72, chapter 16, without reduction for the federal estate tax due or paid. The sum must be determined on the basis of the facts and circumstances in existence on the date on which the tax imposed by Title 72, chapter 16, is determined, but in no event later than a date 18 months after the date of the death of the decedent.

(2) "Closely held business amount" means the value of the interest in a closely held business that qualifies under 72-16-452(1).

(3) "Internal Revenue Code" means the Internal Revenue Code of 1954. A reference to a specific section of that code is a reference to that section as it may be labeled or amended.

(4) "Value" means value determined for the purposes of the Montana inheritance tax.

History: **En. Sec. 13, Ch. 705, L. 1979.**

72-16-452. Deferred payment for transfer of closely held business interest. (1) If the value of an interest in a closely held business that is taxable under Title 72, chapter 16, part 3, as a transfer from a decedent who was at the time of death a resident of this state exceeds 65% of the adjusted gross estate, the personal representative may elect to pay all or part of the tax imposed by Title 72, chapter 16, part 3, in 2 or more but less than 11 equal installments.

(2) The maximum amount of tax that may be paid in installments by each beneficiary is an amount that bears the same ratio to the tax imposed by Title 72, chapter 16, part 3, as the closely held business amount passing to the beneficiary bears to the clear market value of all property passing to the beneficiary, without reduction for the federal estate tax due or paid.

(3) If an election is made under (1) of this section, the first installment must be paid on or before a date selected by the personal representative that is not more than 5 years after the date prescribed by 72-16-441 for the payment of tax without interest. If, however, a credit is claimed on the federal estate tax return for state death taxes on the estate under the provisions of section 2011(a) of the Internal Revenue Code, as amended, an amount of inheritance tax due equal to the federal credit must be paid within the period established in section 2011(c) of the Internal Revenue Code, as amended. Each succeeding installment must be paid on or before the date that is 1 year after the date of the preceding installment. The department may for reasonable cause extend the time for payment of any installment under this section, including any part of an additional tax prorated to any installment, for a reasonable period but not beyond the date that is 12 months after the due date for the last installment.

(4) If an election is made under (1) of this section, the tax due may not be further deferred under the provisions of 72-16-438.

History: **En. Sec. 14, Ch. 705, L. 1979.**

72-16-453. Closely held business defined — qualification. (1) For the purposes of 72-16-452, the term "interest in a closely held business" means:

(a) an interest as a proprietor in a trade or business carried on as a proprietorship;

(b) an interest as a partner in a partnership carrying on a trade or business if:

(i) 20% or more of the total capital interest in the partnership is taxable under Title 72, chapter 16, part 3, as a transfer from the decedent; or

(ii) the partnership had 15 or fewer partners;

(c) stock in a corporation carrying on a trade or business if:

(i) 20% or more in value of the voting stock of the corporation is taxable under Title 72, chapter 16, part 3, as a transfer from the decedent; or

(ii) the corporation had 15 or fewer shareholders.

(2) Determination for qualification under (1) of this section must be made as of the time immediately before the decedent's death.

(3) Stock or a partnership interest held by a husband and wife as joint tenants or tenants in common is treated as owned by one shareholder or one partner, as the case may be.

(4) Property owned directly or indirectly by or for a corporation, partnership, estate, or trust is considered as being owned proportionately by or for its shareholders, partners, or beneficiaries. For the purposes of this subsection, a person is a beneficiary of a trust only if he has a present interest in the trust.

(5) All stock and all partnership interests held by the decedent or by any member of his family within the meaning of section 267(c)(4) of the Internal Revenue Code is treated as being owned by the decedent.

History: **En. Sec. 15, Ch. 705, L. 1979.**

72-16-454. Farmhouses and other structures taken into account. For the purposes of the 65% requirement of 72-16-452, an interest in a closely held business that is the business of farming includes an interest in residential buildings and related improvements on the farm which are occupied on a regular basis by the owner or lessee of the farm or by persons employed by the owner or lessee for purposes of operating or maintaining the farm.

History: **En. Sec. 16, Ch. 705, L. 1979.**

72-16-455. Partnership interests and stock not readily tradable. (1) If the personal representative elects the benefits of this section, at such time and in such manner as the department may prescribe:

(a) for the purposes of subsection (1)(b)(i) or (1)(c)(i) of 72-16-453, whichever is appropriate, and for the purposes of 72-16-456, any capital interest in a partnership and any nonreadily tradable stock, which after the application of subsections (2) through (5) of 72-16-453 is treated as owned by the decedent, shall be treated as taxable under Title 72, chapter 16, part 3, in determining the value of a transfer from the decedent;

(b) the personal representative shall be treated as having selected under 72-16-452(3) the date prescribed by 72-16-441 for the payment of the tax without interest; and

(c) section 72-16-461 does not apply.

(2) For the purposes of this section, "nonreadily tradable stock" means stock for which at the time of the decedent's death there was no market on the stock exchange or in an over-the-counter market.

History: **En. Sec. 17, Ch. 705, L. 1979.**

72-16-456. Interests in more than one closely held business. (1) Interests in two or more closely held businesses, with respect to which there is taxable under Title 72, chapter 16, part 3, as a transfer from the decedent more than 20% of the total value of each business, shall be treated as an interest in a single closely held business.

(2) For the purposes of the 20% requirement of (1) of this section, an interest in a closely held business that represents the surviving spouse's interest in property held by the decedent and the surviving spouse as joint tenants or tenants in common shall be treated as taxable under Title 72, chapter 16, part 3, in determining the value of a transfer from the decedent.

History: **En. Sec. 18, Ch. 705, L. 1979.**

72-16-457. Election. An election under 72-16-452 must be made not later than 18 months after the death of the decedent and must be made in such manner as the department prescribes.

History: En. Sec. 19, Ch. 705, L. 1979.

72-16-458. Proration of any additional tax when election made. (1) If an election is made under 72-16-452 to pay any part of the tax imposed by Title 72, chapter 16, part 3, in installments and an additional tax is determined, the additional tax, subject to the limitation provided by 72-16-452(2), shall be prorated to the installments payable under 72-16-452.

(2) (a) The part of the additional tax so prorated to any installment, the date for payment of which has not arrived, shall be collected at the same time as and as part of the installment.

(b) The part of the additional tax so prorated to any installment already paid shall be paid on notice and demand from the department.

(3) This section does not apply if the additional tax is due to negligence, intentional disregard of rules, or fraud with intent to evade tax.

History: En. Sec. 20, Ch. 705, L. 1979.

72-16-459. Election of deferral as to additional tax. (1) If an additional tax is determined under Title 72, chapter 16, part 3, and the estate qualifies under 72-16-452 and the personal representative has not made an election under 72-16-452, the personal representative may elect to pay the additional tax in installments.

(2) An election under this section must be made not later than 60 days after notice and demand for payment of the additional tax has been given by the department and must be made in the manner prescribed by the department.

(3) If an election is made under this section, the additional tax shall, subject to the limitation in 72-16-452(2), be prorated to the installments that would have been due if an election had been timely made under 72-16-452. The part of the additional tax so prorated to any installment the date for payment of which would have arrived shall be paid at the time of the making of the election under this section. The portion of the additional tax prorated to installments, the date for payment of which would not have so arrived, shall be paid at the time such installments would have been due if such an election had been made.

History: En. Sec. 24, Ch. 705, L. 1979.

72-16-460. Security. If the time for payment of any amount of tax has been extended under 72-16-459, the department may require the taxpayer to furnish a bond in an amount not exceeding double the amount with respect to which the extension is granted conditioned upon the payment of the amount extended in accordance with the terms of the extension.

History: En. Sec. 25, Ch. 705, L. 1979.

72-16-461. Interest required when payment deferred — rate. (1) If the time for payment of an amount of tax imposed by Title 72, chapter 16, part 3, is extended as provided in 72-16-452 interest on the 4% portion of such amount shall, in lieu of the annual rate provided by 72-16-441, be paid at the rate of 4%. For the purposes of this section, the amount of any additional tax that is prorated to installments payable under 72-16-459 shall be treated as an amount of tax payable in installments under that section.

(2) For the purposes of this section, "4% portion" means the lesser of:

(a) $345,800; or

(b) the amount of the tax imposed by Title 72, chapter 16, part 3, which is extended as provided in 72-16-452.

(3) If the amount of tax imposed by Title 72, chapter 16, part 3, that is extended exceeds the 4% portion, any payment of a portion of such amount shall, for the purpose of computing interest for periods after such payment, be treated as reducing the 4% portion by an amount that bears the same ratio to the amount of such payment as the amount of the 4% portion, determined without regard to this section, bears to the amount of tax that is extended as provided in 72-16-452.

History: En. Sec. 27, Ch. 705, L. 1979.

72-16-462. Interest — when payable. (1) If the time for payment of any amount of tax has been extended under 72-16-451 through 72-16-465, interest payable under 72-16-461 on any unpaid portion of such amount:

(a) attributable to the first 5 years after the date prescribed by 72-16-441 for the payment of the tax without interest shall be paid annually;

(b) attributable to any period after the 5-year period referred to in (1)(a) of this section shall be paid annually at the same time as and as part of each installment payment of the tax.

(2) In the case of an additional tax to which 72-16-458 applies that is determined after the close of the 5-year period referred to in (1)(a) of this section, interest attributable to such 5-year period and interest assigned to any installment the date for which has arrived on or before the date of the assessment of the additional tax must be paid on notice and demand from the department.

(3) If the personal representative has selected a period shorter than 5 years, the shorter period shall be substituted for 5 years in (1) and (2) of this section.

History: En. Sec. 21, Ch. 705, L. 1979.

72-16-463. Failure to pay installment — acceleration of payment. If any installment under 72-16-451 through 72-16-465 is not paid on or before the date fixed for its payment, including any extension of time for the payment of the installment, the unpaid portion of the tax payable in installments must be paid on notice and demand from the department.

History: En. Sec. 23, Ch. 705, L. 1979.

72-16-464. Acceleration of payment — other grounds. (1) The extension of time for payment of tax provided in 72-16-452 shall cease to apply and any unpaid portion of the tax payable must be paid upon notice and demand of the department if:

(a) one-third or more in value of an interest in a closely held business that qualifies under 72-16-452 is distributed, sold, exchanged, or otherwise disposed of; or

(b) aggregate withdrawals of money and other property from the trade or business, an interest in which qualifies under 72-16-452, made with respect to such interest, equal or exceed one-third of the value of such trade or business.

(2) In the case of a distribution in redemption of stock to which section 303 of the Internal Revenue Code or so much of section 304 of the Internal Revenue Code as relates to section 303 applies:

(a) subsection (1)(a) of this section does not apply with respect to the stock redeemed and, for the purposes of subsection (1)(a), the interest in the closely held business shall be considered to be such interest reduced by the value of the stock redeemed; and

(b) subsection (1)(b) of this section does not apply with respect to withdrawals of money and other property distributed and, for the purposes of subsection (1)(b), the value of the trade or business shall be considered to be such value reduced by the amount of money and other property distributed.

(3) Subsection (1)(a) of this section does not apply to an exchange of stock pursuant to a plan of reorganization described in (D), (E), or (F) of section 368(a)(1) of the Internal Revenue Code or to an exchange to which section 355 of the Internal Revenue Code or so much of section 356 of the Internal Revenue Code applies to section 355, but any stock received in such an exchange shall be treated for purposes of subsection (1)(a) as an interest qualifying under 72-16-452.

(4) Subsection (1)(a) of this section does not apply to a transfer of property of the decedent to a person entitled by reason of the decedent's death to receive such property under the decedent's will, intestate succession, or a trust created by the decedent.

History: **En. Sec. 22, Ch. 705, L. 1979.**

72-16-465. Effect of payment deferral on statute of limitations. The running of the period of limitations for collection of any tax imposed by Title 72, chapter 16, part 3, is suspended for the period of any extension of time for payment granted under 72-16-452.

History: **En. Sec. 26, Ch. 705, L. 1979.**

72-16-466 through 72-16-470 reserved.

72-16-471. Definitions for lien on deferred tax purposes. As used in 72-16-471 through 72-16-482, the following definitions apply:

(1) "Deferral period" means the period for which the payment of tax is deferred under 72-16-452.

(2) "Deferred amount" means the aggregate amount deferred under 72-16-452 determined as of the date prescribed by 72-16-441 for payment without interest of the tax imposed by Title 72, chapter 16, part 3.

(3) "Lien property" means interests in real and other property to the extent such interests can be expected to survive the deferral period and are designated in the agreement referred to in 72-16-474.

(4) "Required interest amount" means the aggregate amount of interest that will be payable over the first 4 years of the deferral period with respect to the deferred amount determined as of the date prescribed for payment without interest of the tax imposed by Title 72, chapter 16, part 3.

History: **En. Sec. 28, Ch. 705, L. 1979.**

72-16-472. Lien for tax deferred. In the case of any estate with respect to which an election has been made under 72-16-452, if the personal representative makes an election under this section at such time and in such manner as the department may prescribe and files the agreement referred to in 72-16-474 the deferred amount, plus any interest or additional amount, shall be a lien in favor of the state on the lien property.

History: **En. Sec. 29, Ch. 705, L. 1979.**

72-16-473. Application of definitions to additional tax. In the case of an additional tax, a separate deferral period, deferred amount, and required interest amount shall be determined as of the due date of the first installment after the additional tax is prorated to installments under 72-16-452.

History: **En. Sec. 39, Ch. 705, L. 1979.**

72-16-474. Agreement consenting to lien. The agreement is a written agreement signed by each person in being who has an interest, whether or not in possession, in any property designated in the agreement:

(1) consenting to the creation of the lien under 72-16-472 with respect to the property; and

(2) designating a responsible person to be agent for the beneficiaries of the estate and for persons who have consented to the creation of the lien in dealings with the department on matters arising under 72-16-452 or 72-16-472.

History: **En. Sec. 32, Ch. 705, L. 1979.**

72-16-475. Maximum value of required lien property. (1) The maximum value of the property that the department may require as lien property with respect to any estate is a value that is not greater than the sum of the deferred amount and the required interest amount.

(2) For the purposes of (1) of this section, the value of any property is determined as of the date prescribed by 72-16-441 for payment of the tax without interest and is determined by taking into account any encumbrances.

History: **En. Sec. 30, Ch. 705, L. 1979.**

72-16-476. Partial substitution of bond for lien. If the value required as lien property exceeds the value of the interests in property covered by the agreement referred to in 72-16-474, the department may accept a bond in an amount equal to such excess conditioned on the payment of the amount extended in accordance with the terms of the extension.

History: **En. Sec. 31, Ch. 705, L. 1979.**

72-16-477. Filing of lien. The lien imposed by 72-16-472 is not valid against a purchaser, holder of a security interest, mechanic's lien, or judgment lien creditor until notice that meets the requirements of 71-3-204 has been filed by the department.

History: **En. Sec. 33, Ch. 705, L. 1979.**

72-16-478. Period of lien. The lien imposed by 72-16-472 arises at the time notice is filed under 72-16-477 and continues until liability for the deferred amount is satisfied or becomes unenforceable by reason of lapse of time.

History: **En. Sec. 34, Ch. 705, L. 1979.**

72-16-479. Priorities. (1) A lien filed under 72-16-472 is not valid:

(a) as against real property tax and special assessment liens;

(b) in the case of real property subject to a lien for repair or improvement, as against a mechanic's lienor; or

(c) as against a security interest set forth in paragraph 3 of section 6323(c) of the Internal Revenue Code, whether the security interest came into effect before or after the tax lien filing.

(2) Subsections (1)(b) and (1)(c) of this section do not apply to any security interest that came into existence after the date on which the department filed notice that payment of the deferred amount has been accelerated under 72-16-464.

History: **En. Sec. 35, Ch. 705, L. 1979.**

72-16-480. Lien in lieu of other tax liens. If there is a lien on property under 72-16-472, the lien under 72-16-432 does not apply to the property with respect to the same estate.

History: **En. Sec. 36, Ch. 705, L. 1979.**

72-16-481. Lien in lieu of bond. The department may not require the furnishing of any bond for the payment of tax to which an agreement that meets the requirements of 72-16-474 applies.

History: **En. Sec. 38, Ch. 705, L. 1979.**

72-16-482. Additional lien property. (1) If at any time the value of the property covered by the agreement is less than the unpaid portion of the deferred amount and the required interest amount, the department may require the addition of property to the agreement. The department may not require that the value of the property covered by the agreement exceed the unpaid portion.

(2) If property having the required value is not added to the property covered by the agreement or if other security equal to the required value is not furnished within 90 days after notice and demand by the department, the failure to comply shall be treated as an act accelerating payment of the installments under 72-16-464.

History: **En. Sec. 37, Ch. 705, L. 1979.**

72-16-483 through 72-16-490 reserved.

72-16-491. Lien for additional tax attributable to farm and closely held business property. (1) In the case of any interest in qualified real property within the meaning of 72-16-331(11), an amount equal to the adjusted tax difference attributable to such interest within the meaning of 72-16-338(3) is a lien in favor of the state on the property in which such interest exists.

(2) The lien imposed by this section shall arise at the time an election is filed under 72-16-333 and continues with respect to any interest in the qualified real property until:

(a) the liability for tax under 72-16-338 with respect to such interest has been satisfied or has become unenforceable by reason of lapse of time; or

(b) until it is established to the satisfaction of the department that no further tax liability may arise under 72-16-338 with respect to such interest.

(3) Sections 72-16-477, 72-16-479, and 72-16-480 apply with respect to a lien imposed by 72-16-491.

History: **En. Sec. 40, Ch. 705, L. 1979.**

72-16-492. Substitution of security for lien. The department may provide by rule for the substitution of security for the lien imposed by 72-16-491.

History: **En. Sec. 41, Ch. 705, L. 1979.**

72-16-493. Subordination of liens. The department may consent to the subordination of a lien imposed by 72-16-472 or 72-16-491 upon any part of the property subject to the lien if the state will be adequately secured after the subordination.

History: **En. Sec. 42, Ch. 705, L. 1979.**

Part 5

Joint Tenancies and Life Estates
Determination of Tax — Termination

72-16-501. Interest of decedent terminated upon death. The interest of the decedent in property held in joint tenancy terminates upon his death.

History: **En. 91-4471 by Sec. 2, Ch. 409, L. 1977; R.C.M. 1947, 91-4471(2).**

72-16-502. Determination and payment of tax when no personal representative — procedure. (1) For the purposes of this section, a decedent is one who dies leaving no property which requires the appointment of a personal representative and:

(a) was the owner of a life estate which terminated at his death;

(b) was the owner of property with another or others as a joint tenant with right of survivorship and not as a tenant in common; or

(c) was the owner of any other interest in property requiring the determination of inheritance tax because of his death.

(2) Upon the death of a decedent, a remainderman, surviving joint tenant, or other interested party shall file with the department of revenue:

(a) a copy of the death certificate;

(b) a verified application in a form prescribed by the department containing such information as the department considers necessary; and

(c) evidence of the instruments which created the life estate, joint tenancy, or other interest requiring determination of inheritance tax, if required by the department.

(3) Upon receipt of the application, the department shall:

(a) stamp the filing date upon the application;

(b) issue a certificate showing the inheritance tax due, if any;

(c) affix the certificate to a certified copy of the application and return the same to the applicant or his attorney; and

(d) affix a copy of the certificate to the original application and keep it on file with the department.

(4) The applicant shall pay the inheritance tax determined to the county treasurer for transmittal to the state treasurer. The county treasurer shall issue a receipt for the payment of the tax.

(5) If disputes arise as to tax computation, they shall be resolved as provided under the laws applicable to the determination of inheritance taxes in estates.

History: **En. 91-4470 by Sec. 1, Ch. 409, L. 1977; R.C.M. 1947, 91-4470.**

72-16-503. Additional filings required when real property involved and no representative — release of lien. (1) If an interest in real property is involved under 72-16-502, the applicant shall record with the clerk and recorder of each county in which the real property or any part thereof is located a document containing those matters required by 7-4-2613(3).

(2) The recording of the documents under subsection (1) constitutes release of any lien for inheritance taxes.

History: **En. 91-4471 by Sec. 2, Ch. 409, L. 1977; R.C.M. 1947, 91-4471(1), (3); amd. Sec. 2, Ch. 377, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted "record" for "file" after "applicant shall" in (1); deleted former subsections (1)(a) through (1)(c) which related to the application in 7-16-502(2)(b), the inheritance tax certificate from revenue, and a payment receipt from the county treasurer; inserted "a document containing those matters required by 7-4-2613(3)" after "located" in (1); substituted "recording" for "filing" after "The" at the beginning of (2).

72-16-504. Determination and payment of tax when personal representative appointed — procedure. If a decedent dies leaving property which requires the appointment of a personal representative and was also an owner of property as described in 72-16-502(1), the remainderman, surviving joint tenant, personal representative, or other interested party may have the inheritance tax determined and the joint tenancy terminated or ownership transferred as provided in 72-16-501 through 72-16-503 by filing with the department:

(1) the information listed in 72-16-502(2); and

(2) the name of the county of administration or probate and the court file number.

History: **En. 91-4472 by Sec. 3, Ch. 409, L. 1977; R.C.M. 1947, 91-4472.**

72-16-505. Attorney not required for transfer of title — maximum attorney's fee. (1) If a decedent as defined in 72-16-502 leaves a surviving spouse, the surviving spouse is not required to hire an attorney to transfer title to the property involved.

(2) If an attorney is hired by the surviving spouse, the attorney's fee for services required in terminating a joint tenancy or transferring other types of ownership listed in 72-16-502 may not exceed 2% of the value of the interest passing to the spouse.

History: **En. 91-4473 by Sec. 4, Ch. 409, L. 1977; R.C.M. 1947, 91-4473.**

Part 6

Apportionment of Taxes

72-16-601. Definitions. For purposes of this part, the following definitions apply:

(1) "Estate" means the gross estate of a decedent as determined for the purpose of federal estate tax and the estate tax payable to this state.

(2) "Fiduciary" means personal representative or trustee.

(3) "Person" means any individual, partnership, association, joint-stock company, corporation, government, political subdivision, governmental agency, or local governmental agency.

(4) "Person interested in the estate" means any person entitled to receive or who has received from a decedent or by reason of the death of a decedent any property or interest therein included in the decedent's estate. It includes a personal representative, conservator, and trustee.

(5) "State" means any state, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(6) "Tax" means the federal estate tax and any additional inheritance, estate, or death taxes imposed by the laws of any state and interest and penalties imposed in addition to the tax.

History: En. 91A-3-916 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-916(1).

72-16-602. Authority of court of administration to determine apportionment. The court in which venue lies for the administration of the estate of a decedent, on petition for the purpose, may determine the apportionment of the tax.

History: En. 91A-3-916 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-916(3)(a).

72-16-603. Tax — how apportioned. (1) Unless the will otherwise provides, the tax shall be apportioned among all persons interested in the estate. The apportionment is to be made in the proportion that the value of the interest of each person interested in the estate bears to the total value of the interests of all persons interested in the estate. The values used in determining the tax are to be used for that purpose.

(2) If the decedent's will directs a method of apportionment of tax different from the method described in this part, the method described in the will controls.

History: En. 91A-3-916 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-916(2).

72-16-604. Equitable power of court to vary manner of apportionment. If the court finds that it is inequitable to apportion interest and penalties in the manner provided in 72-16-603 because of special circumstances, it may direct apportionment thereof in the manner it finds equitable.

History: En. 91A-3-916 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-916(3)(b).

72-16-605. Distribution prior to apportionment — bond required. If property held by the personal representative is distributed prior to final apportionment of the tax, the distributee shall provide a bond or other security for the apportionment liability in the form and amount prescribed by the personal representative.

History: En. 91A-3-916 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-916(4)(b).

72-16-606. No apportionment as between temporary interest and remainder. No interest in income and no estate for years or for life or other temporary interest in any property or fund is subject to apportionment as between the temporary interest and the remainder. The tax on the temporary interest and the tax, if any, on the remainder is chargeable against the corpus of the property or funds subject to the temporary interest and remainder.

History: En. 91A-3-916 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-916(6).

72-16-607. Allowance for exemptions, deductions, and credits. (1) In making an apportionment, allowances shall be made for any exemptions granted, any classification made of persons interested in the estate, and for any deductions and credits allowed by the law imposing the tax.

(2) Any exemption or deduction allowed by reason of the relationship of any person to the decedent or by reason of the purposes of the gift inures to the benefit of the person bearing such relationship or receiving the gift, but if an interest is subject to a prior present interest which is not allowable as a deduction, the tax apportionable against the present interest shall be paid from principal.

(3) Any deduction for property previously taxed and any credit for gift taxes or death taxes of a foreign country paid by the decedent or his estate inures to the proportionate benefit of all persons liable to apportionment.

(4) Any credit for inheritance, succession, or estate taxes or taxes in the nature thereof applicable to property or interests includable in the estate inures to the benefit of the persons or interests chargeable with the payment thereof to the extent proportionately that the credit reduces the tax.

(5) To the extent that property passing to or in trust for a surviving spouse or any charitable, public, or similar gift or devise is not an allowable deduction for purposes of the tax solely by reason of an inheritance tax or other death tax imposed upon and deductible from the property, the property is not included in the computation provided for in 72-16-603 and to that extent no apportionment is made against the property. The sentence immediately preceding does not apply to any case if the result would be to deprive the estate of a deduction otherwise allowable under section 2053(d) of the Internal Revenue Code of 1954, as amended, of the United States, relating to deduction for state death taxes on transfers for public, charitable, or religious uses.

History: En. 91A-3-916 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-916(5).

72-16-608. Powers of personal representative in relation to satisfaction of tax liability. (1) The personal representative or other person in possession of the property of the decedent required to pay the tax may withhold from any property distributable to any person interested in the estate, upon its distribution to him, the amount of tax attributable to his interest.

(2) If the property in possession of the personal representative or other person required to pay the tax and distributable to any person interested in the estate is insufficient to satisfy the proportionate amount of the tax determined to be due from the person, the personal representative or other person

required to pay the tax may recover the deficiency from the person interested in the estate.

(3) If the property is not in the possession of the personal representative or the other person required to pay the tax, the personal representative or the other person required to pay the tax may recover from any person interested in the estate the amount of the tax apportioned to the person in accordance with this part.

History: **En. 91A-3-916 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-916(4)(a).**

72-16-609. Penalties and interest charged to fiduciary when caused by his negligence. If the court finds that the assessment of penalties and interest assessed in relation to the tax is due to delay caused by the negligence of the fiduciary, the court may charge him with the amount of the assessed penalties and interest.

History: **En. 91A-3-916 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-916(3)(c).**

72-16-610. Action to recover apportioned tax — limitations on duty to initiate — uncollectability. Neither the personal representative nor other person required to pay the tax is under any duty to institute any action to recover from any person interested in the estate the amount of the tax apportioned to the person until the expiration of the 3 months next following final determination of the tax. A personal representative or other person required to pay the tax who institutes the action within a reasonable time after the 3-month period is not subject to any liability or surcharge because any portion of the tax apportioned to any person interested in the estate was collectable at a time following the death of the decedent but thereafter became uncollectable. If the personal representative or other person required to pay the tax cannot collect from any person interested in the estate the amount of the tax apportioned to the person, the amount not recoverable shall be equitably apportioned among the other persons interested in the estate who are subject to apportionment.

History: **En. 91A-3-916 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-916(7).**

72-16-611. Action to recover apportioned tax — determination of court prima facie correct. In any action to recover from any person interested in the estate the amount of the tax apportioned to the person in accordance with this part, the determination of the court in respect thereto made pursuant to 72-16-602 shall be prima facie correct.

History: **En. 91A-3-916 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-916(3)(d).**

72-16-612. Action by foreign representative to recover apportioned tax. A personal representative acting in another state or a person required to pay the tax domiciled in another state may institute an action in the courts of this state and may recover a proportionate amount of the federal estate tax, of an estate tax payable to another state, or of a death duty due by a decedent's estate to another state from a person interested in the estate who is either domiciled in this state or who owns property in this state subject to attachment or execution. For the purposes of the action, the determination of apportionment by the court having jurisdiction of the administration of the decedent's estate in the other state is prima facie correct.

History: **En. 91A-3-916 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-916(8).**

Part 7

Estates With Multistate Aspects — Securities Transfer

72-16-701. Transfer of in-state securities by foreign representative — payment of tax. If a foreign executor, administrator, or trustee shall assign or transfer any stocks, bonds, mortgages, or other securities, in this state or within the jurisdiction of this state standing in the name of a decedent or in trust for a decedent liable to any such tax, the tax shall be paid to the treasurer of the proper county or the state treasurer on the transfer thereof; otherwise the corporation permitting such transfer shall become liable to pay such tax.

History: En. Sec. 11, Ch. 65, L. 1923; amd. Sec. 2, Ch. 150, L. 1925; amd. Sec. 2, Ch. 105, L. 1927; amd. Sec. 1, Ch. 130, L. 1929; re-en. Sec. 10400.11, R.C.M. 1935; amd. Sec. 1, Ch. 62, L. 1953; amd. Sec. 80, Ch. 391, L. 1973; R.C.M. 1947, 91-4421(1).

72-16-702. Duties of holder of securities or assets of nonresident decedent — prerequisites to transfer — exception. (1) No safe deposit company, bank, or other institution or person or persons holding securities or assets of a nonresident decedent or any corporation organized under the laws of this state in which a nonresident decedent held stock, bonds, mortgages, or other securities at his decease shall deliver or transfer the same to the executors, administrators, or legal representatives of said decedent or upon their order or request unless notice of the time and place of such intended transfer be served upon the department of revenue at least 10 days prior to the transfer; nor shall any such safe deposit company, bank, or other institution or person or persons or any corporation deliver or transfer any securities or assets of the estate of a nonresident decedent without retaining a sufficient portion or amount thereof to pay any tax which may thereafter be assessed on account of the transfer of such securities or assets under the provisions of the inheritance tax laws, without an order from the proper court authorizing such transfer; and it shall be lawful for the department, personally or by representative, to examine said securities or assets at any time before such delivery or transfer.

(2) Failure to serve such notice or to allow such examination or to retain a sufficient portion or amount to pay such tax as herein provided shall render said safe deposit company, trust company, bank, or other institution or person or persons or such corporation liable to the payment of the tax due upon said securities or assets in pursuance of the provisions of the inheritance tax laws.

(3) The department may issue a certificate authorizing the transfer of any such stock, securities, or assets whenever it appears to the satisfaction of the department that no tax is due thereon.

(4) The foregoing provisions shall not apply to shares of stock in any Montana corporation held by a nonresident of Montana at the time of his death whose death occurred on or after January 30, 1945 and who was at the time of his death domiciled in any other district or state of the United States, provided reciprocal rights are granted by such district or state of domicile similar to 72-16-801, and in such event this section shall not apply to the transfer of stocks, bonds, mortgages, or other securities exempt from

taxation under the provisions of 72-16-801, and a Montana corporation or its agent may transfer stocks, bonds, mortgages, and other securities without any liability for the tax imposed under the provisions of the inheritance tax laws where there are reciprocal rights as set forth in 72-16-801, and in such event no application for consent to transfer such stock need be made to the department, and the corporation or its duly authorized transfer agent may transfer such shares of stock upon its books without any such application or consent to transfer.

History: En. Sec. 11, Ch. 65, L. 1923; amd. Sec. 2, Ch. 150, L. 1925; amd. Sec. 2, Ch. 105, L. 1927; amd. Sec. 1, Ch. 130, L. 1929; re-en. Sec. 10400.11, R.C.M. 1935; amd. Sec. 1, Ch. 62, L. 1953; amd. Sec. 80, Ch. 391, L. 1973; R.C.M. 1947, 91-4421(2).

72-16-703. Holder of securities in Montana corporation not to transfer without retaining portion for tax. No holding company or other corporation subject to the provisions of this part shall deliver or transfer any such stocks, bonds, mortgages, or other securities of a Montana corporation without retaining a sufficient portion thereof to pay any tax which may thereafter be assessed under the provisions of parts 1 through 8 on account of such transfer, except upon order of the proper court or a certificate of consent of the department of revenue.

History: En. Sec. 11, Ch. 65, L. 1923; amd. Sec. 2, Ch. 150, L. 1925; amd. Sec. 2, Ch. 105, L. 1927; amd. Sec. 1, Ch. 130, L. 1929; re-en. Sec. 10400.11, R.C.M. 1935; amd. Sec. 1, Ch. 62, L. 1953; amd. Sec. 80, Ch. 391, L. 1973; R.C.M. 1947, 91-4421(part).

72-16-704. Apportionment of deductions when property partly within and partly without the state. Whenever a tax is due from the estate, or the beneficiaries therein, of any resident or nonresident decedent upon the transfer of any property when the property or the estate left by such decedent is partly within and partly without this state or upon any stocks, bonds, mortgages, or other securities representing property or estate partly within and partly without this state, any beneficiary of such estate is entitled to deduct only his proper proportion of that portion of the total debts and expenses of administration which the gross estate in Montana or within its jurisdiction bears to the gross estate both within and without this state. As to his Montana exemption, each beneficiary is entitled to deduct only that portion represented by the ratio between his interest in the property in this state or within its jurisdiction and his interest in the entire estate.

History: En. Sec. 11, Ch. 65, L. 1923; amd. Sec. 2, Ch. 150, L. 1925; amd. Sec. 2, Ch. 105, L. 1927; amd. Sec. 1, Ch. 130, L. 1929; re-en. Sec. 10400.11, R.C.M. 1935; amd. Sec. 1, Ch. 62, L. 1953; amd. Sec. 80, Ch. 391, L. 1973; R.C.M. 1947, 91-4421(3); amd. Sec. 27, Ch. 6, L. 1979.

72-16-705. Department to secure information — rulemaking. The department of revenue shall require such reports and information and shall make such orders and rules as it may deem necessary to enable the department to secure the necessary information from domestic corporations and to ascertain the amount of and collect such tax.

History: En. Sec. 11, Ch. 65, L. 1923; amd. Sec. 2, Ch. 150, L. 1925; amd. Sec. 2, Ch. 105, L. 1927; amd. Sec. 1, Ch. 130, L. 1929; re-en. Sec. 10400.11, R.C.M. 1935; amd. Sec. 1, Ch. 62, L. 1953; amd. Sec. 80, Ch. 391, L. 1973; R.C.M. 1947, 91-4421(part).

72-16-706. Penalty. Any corporation or holding company violating the provisions of this part shall be liable to the state for the amount of the tax together with a penalty of 10% thereof.

History: En. Sec. 11, Ch. 65, L. 1923; amd. Sec. 2, Ch. 150, L. 1925; amd. Sec. 2, Ch. 105, L. 1927; amd. Sec. 1, Ch. 130, L. 1929; re-en. Sec. 10400.11, R.C.M. 1935; amd. Sec. 1, Ch. 62, L. 1953; amd. Sec. 80, Ch. 391, L. 1973; R.C.M. 1947, 91-4421(5).

Part 8

Nonresident Decedents

72-16-801. Exemption of intangible personal property of nonresident decedent — when. The tax imposed by parts 3, 7, and 9 and this part in respect of personal property, except tangible personal property having an actual situs in this state, is not payable if:

(1) the decedent is a resident of a state or territory of the United States which at the time of the transfer did not impose a transfer tax or death tax of any character in respect of personal property of residents of this state, except tangible personal property having an actual situs in that state or territory; or

(2) the laws of the state or territory of residence of the nonresident decedent at the time of the transfer contained a reciprocal provision under which nonresidents of that state were exempted from transfer taxes or death taxes of every character in respect of personal property, except tangible personal property having an actual situs in that state, provided the state or territory of residence of such nonresident decedent allowed a similar exemption to residents of this state.

History: En. Sec. 1, Ch. 3, L. 1945; R.C.M. 1947, 91-4413; amd. Sec. 28, Ch. 6, L. 1979.

72-16-802. Nonresident decedent — application to department for determination of tax — affidavit. (1) Any personal representative, trustee, heir, devisee, or legatee of a nonresident decedent leaving no estate requiring administration in this state desiring to transfer any stocks, bonds, mortgages, or other securities or other personal property in this state or within the jurisdiction of this state may make application to the department of revenue for the determination whether there is any tax due upon account of the transfer thereof and the amount of any such tax.

(2) Such applicant shall furnish to the department an affidavit:

(a) setting forth a description and statement of the property owned by the decedent situated within this state or within its jurisdiction at the time of his death and the true value of said property at the time of decedent's death;

(b) setting forth a description and statement of the true value of all property owned by the decedent at the time of his death situated outside of this state and without its jurisdiction; and

(c) containing a schedule or statement of all valid claims against the estate of the decedent, including the expenses of his last illness, funeral expenses, and expenses of administering his estate.

(3) Such applicant shall also, at the same time, furnish the department with:

(a) a certified copy of the last will of the decedent, in case he died testate or an affidavit setting forth the names, ages, and residence of the heirs at law of decedent in case he died intestate;

(b) the proportion of the entire estate of said decedent inherited by each of said persons; and

(c) the relation, if any, which each legatee, devisee, heir, or transferee sustained to the decedent or person from whom the transfer was made.

(4) Such affidavit shall be subscribed and sworn to by the personal representative of the decedent or some other person having knowledge of the facts therein set forth.

(5) The statement contained in any affidavits, statements, or schedules as to values or otherwise shall not be binding upon the department in case it believes the same to be erroneous or untrue.

History: En. Sec. 12, Ch. 65, L. 1923; amd. Sec. 3, Ch. 150, L. 1925; re-en. Sec. 10400.15, R.C.M. 1935; amd. Sec. 82, Ch. 391, L. 1973; R.C.M. 1947, 91-4425(part).

72-16-803. Department to determine tax. From the information so furnished it and such other information as it may be able to obtain with reference thereto, the department of revenue shall with reasonable diligence proceed to ascertain and determine the amount of tax, if any, due under the provisions of parts 1 through 8 and notify the person making the application of the amount of the tax so ascertained and determined to be due; or, in case there is no tax to be paid, the department shall issue a consent to the transfer of the property so owned by the decedent.

History: En. Sec. 12, Ch. 65, L. 1923; amd. Sec. 3, Ch. 150, L. 1925; re-en. Sec. 10400.15, R.C.M. 1935; amd. Sec. 82, Ch. 391, L. 1973; R.C.M. 1947, 91-4425(part).

72-16-804. Appeal from determination of department. Any person aggrieved by the determination of the department of revenue in any matter provided for in 72-16-802 or 72-16-803 may, within 30 days thereafter, appeal to the district court of Lewis and Clark County by serving on the department a notice in writing setting forth his objections to such determination and by filing such notice, after so serving the same, in the office of the clerk of such court, and thereupon and within 10 days after the service of such notice on it the department shall transmit full and complete copies of all original papers and records which have been filed with it in relation to such application to the clerk of said district court, and thereupon the district court shall have jurisdiction of such application and proceeding. Upon 10 days' notice given by either applicant or the department, the matter may be brought on for hearing and determination by said court, either in term time or in vacation, at a general or special term of court or at chambers, as may be directed by the order of the court.

History: En. Sec. 12, Ch. 65, L. 1923; amd. Sec. 3, Ch. 150, L. 1925; re-en. Sec. 10400.15, R.C.M. 1935; amd. Sec. 82, Ch. 391, L. 1973; R.C.M. 1947, 91-4425(3).

72-16-805. Procedure of department when application not made. (1) Whenever any nonresident decedent leaving no estate requiring administration in this state shall leave any stocks, bonds, mortgages, or other securities or other personal property within the state or within the jurisdiction thereof and no personal representative, trustee, heir, devisee, or legatee of such nonresident decedent has made application to the department of revenue for the determination as to whether there is any tax due for the transfer thereof and the amount of such tax, if any, the department, upon such matter being called to its attention, shall make an order and cause a copy thereof to be served upon the personal representative, trustee, heirs, devisees, or legatees of such nonresident decedent ordering and directing that a statement and return, under oath, containing the statements and information prescribed in 72-16-802 be filed with such department within 60 days from the date of such order or within such further time as the department may grant therefor.

(2) If such statement is not filed with the department within such time, the department may then procure such information in any manner it may deem advisable.

(3) Upon the filing of such statement or the procuring of such information by the department in the event of a failure to file the same in compliance with such order, the department shall proceed in the same manner as prescribed by 72-16-803 and all provisions of 72-16-804 with reference to hearings and appeals shall be applicable thereto.

History: En. Sec. 12, Ch. 65, L. 1923; amd. Sec. 3, Ch. 150, L. 1925; re-en. Sec. 10400.16, R.C.M. 1935; amd. Sec. 83, Ch. 391, L. 1973; R.C.M. 1947, 91-4426.

Part 9

Estate Tax

72-16-901. Purpose — liberal construction to effect. It is hereby declared to be the intent and purpose of this part to obtain for this state the benefit of the credit allowed under the provisions of the Internal Revenue Code, to the extent that this state may be entitled by the provisions of said act, by imposing additional taxes, and the same shall be liberally construed to effect this purpose.

History: En. Sec. 2, Ch. 48, Ex. L. 1933; re-en. Sec. 10400.3a, R.C.M. 1935; amd. Sec. 1, Ch. 360, L. 1969; amd. Sec. 1, Ch. 28, L. 1971; amd. Sec. 12, Ch. 365, L. 1974; R.C.M. 1947, 91-4411(g).

72-16-902. Applicability of other tax provisions. The provisions of parts 1 through 8 relating to the tax on inheritances and transfers shall apply to the taxes imposed by this part, insofar as the same are applicable and not in conflict with the provisions hereof.

History: En. Sec. 2, Ch. 48, Ex. L. 1933; re-en. Sec. 10400.3a, R.C.M. 1935; amd. Sec. 1, Ch. 360, L. 1969; amd. Sec. 1, Ch. 28, L. 1971; amd. Sec. 12, Ch. 365, L. 1974; R.C.M. 1947, 91-4411(h).

72-16-903. Taxable situs of property. For the purpose of this tax, the taxable situs of property shall be the same as the taxable situs for inheritance tax purposes.

History: En. Sec. 2, Ch. 48, Ex. L. 1933; re-en. Sec. 10400.3a, R.C.M. 1935; amd. Sec. 1, Ch. 360, L. 1969; amd. Sec. 1, Ch. 28, L. 1971; amd. Sec. 12, Ch. 365, L. 1974; R.C.M. 1947, 91-4411(part).

72-16-904. Estate tax imposed. In addition to the inheritance taxes hereinabove imposed, an estate tax is hereby imposed upon the transfer of the estate of every decedent leaving an estate which is subject to the federal estate tax imposed by the United States of America under the applicable provisions of the Internal Revenue Code and which has, in whole or in part, a taxable situs in this state.

History: En. Sec. 2, Ch. 48, Ex. L. 1933; re-en. Sec. 10400.3a, R.C.M. 1935; amd. Sec. 1, Ch. 360, L. 1969; amd. Sec. 1, Ch. 28, L. 1971; amd. Sec. 12, Ch. 365, L. 1974; R.C.M. 1947, 91-4411(part).

72-16-905. Estate tax — how computed. The tax hereby imposed upon the transfer of each such estate shall be equal to the maximum tax credit allowable for state death taxes against the federal estate tax imposed with respect to the portion of the decedent's estate having a taxable situs in this state, less the inheritance taxes, if any, due this state, it being the purpose and intent of this part to impose only such additional taxes hereunder as may be necessary to give this state the full benefit of the maximum tax credit allowable against the federal estate tax imposed with respect to a decedent's estate which has a taxable situs in this state. If only a portion of a decedent's estate has a taxable situs in this state, such maximum tax credit shall be determined by multiplying the entire amount of the credit allowable against the federal estate tax for state death taxes by the percentage which the value of the portion of the decedent's estate which has a taxable situs in this state bears to the value of the entire estate.

History: En. Sec. 2, Ch. 48, Ex. L. 1933; re-en. Sec. 10400.3a, R.C.M. 1935; amd. Sec. 1, Ch. 360, L. 1969; amd. Sec. 1, Ch. 28, L. 1971; amd. Sec. 12, Ch. 365, L. 1974; R.C.M. 1947, 91-4411(part).

72-16-906. Required filings. The personal representative of the estate of any decedent whose estate is subject to the payment of a United States estate tax shall file duplicates of the United States estate tax returns with the district court of the county in which such estate is being probated and with the department of revenue. He shall also file with such court and with the department a certificate or other evidence from the internal revenue service showing the amount of the United States estate tax as computed by that agency.

History: En. Sec. 2, Ch. 48, Ex. L. 1933; re-en. Sec. 10400.3a, R.C.M. 1935; amd. Sec. 1, Ch. 360, L. 1969; amd. Sec. 1, Ch. 28, L. 1971; amd. Sec. 12, Ch. 365, L. 1974; R.C.M. 1947, 91-4411(part); amd. Sec. 29, Ch. 6, L. 1979.

72-16-907. Department to determine tax — rehearing and appeal. (1) The department of revenue shall enter an order determining such state estate tax and the amount thereof so due and payable.

(2) Any person in interest aggrieved by such determination shall have the same right to apply for district court determination and of rehearing and appeal as is now provided for in the determination of inheritance taxes.

History: En. Sec. 2, Ch. 48, Ex. L. 1933; re-en. Sec. 10400.3a, R.C.M. 1935; amd. Sec. 1, Ch. 360, L. 1969; amd. Sec. 1, Ch. 28, L. 1971; amd. Sec. 12, Ch. 365, L. 1974; R.C.M. 1947, 91-4411(part).

72-16-908. Persons liable for tax. Administrators, executors, trustees, and grantees under a conveyance made during the grantor's life and taxable hereunder shall be liable for such taxes with interest until the same have been paid.

History: En. Sec. 2, Ch. 48, Ex. L. 1933; re-en. Sec. 10400.3a, R.C.M. 1935; amd. Sec. 1, Ch. 360, L. 1969; amd. Sec. 1, Ch. 28, L. 1971; amd. Sec. 12, Ch. 365, L. 1974; R.C.M. 1947, 91-4411(c).

72-16-909. When and where tax payable — interest. The estate tax shall be payable to the county treasurer of the county in which such estate is being probated in the same manner provided for the payment of inheritance taxes in 72-16-441.

History: En. Sec. 2, Ch. 48, Ex. L. 1933; re-en. Sec. 10400.3a, R.C.M. 1935; amd. Sec. 1, Ch. 360, L. 1969; amd. Sec. 1, Ch. 28, L. 1971; amd. Sec. 12, Ch. 365, L. 1974; R.C.M. 1947, 91-4411(b); amd. Sec. 1, Ch. 166, L. 1979.

72-16-910. Extension of time for payment. The district court of the county in which such estate is being probated may, for cause shown, extend the time of payment of said tax whenever the circumstances of the case require.

History: En. Sec. 2, Ch. 48, Ex. L. 1933; re-en. Sec. 10400.3a, R.C.M. 1935; amd. Sec. 1, Ch. 360, L. 1969; amd. Sec. 1, Ch. 28, L. 1971; amd. Sec. 12, Ch. 365, L. 1974; R.C.M. 1947, 91-4411(e).

72-16-911. Tax lien. Said taxes and interest shall be and remain a lien on the property for a period of 10 years from the date of death, unless sooner paid.

History: En. Sec. 2, Ch. 48, Ex. L. 1933; re-en. Sec. 10400.3a, R.C.M. 1935; amd. Sec. 1, Ch. 360, L. 1969; amd. Sec. 1, Ch. 28, L. 1971; amd. Sec. 12, Ch. 365, L. 1974; R.C.M. 1947, 91-4411(d).

72-16-912. Collection and deposit of tax. The tax imposed herein shall be collected by the several county treasurers or the department of revenue for deposit with the state treasurer.

History: En. Sec. 2, Ch. 48, Ex. L. 1933; re-en. Sec. 10400.3a, R.C.M. 1935; amd. Sec. 1, Ch. 360, L. 1969; amd. Sec. 1, Ch. 28, L. 1971; amd. Sec. 12, Ch. 365, L. 1974; R.C.M. 1947, 91-4411(part).

CHAPTER 17

ANATOMICAL GIFT ACT

Part 1 — General Provisions

Section

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Part 2 — Execution and Operation of Anatomical Gift

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72-17-202. Persons who may become donees — permissible purposes of gift.
72-17-203. Rights of donee paramount.
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72-17-207. Gift authorizes examination.
72-17-208. Delivery of document to expedite procedures — delivery not necessary to validity.
72-17-209. Amendment or revocation of gift.
72-17-210. Rights and duties at death.

Part 1

General Provisions

72-17-101. Short title. This chapter may be cited as the "Uniform Anatomical Gift Act".

History: En. Sec. 9, Ch. 340, L. 1969; R.C.M. 1947, 69-2323.

72-17-102. Definitions. (1) "Bank or storage facility" means a facility licensed, accredited, or approved under the laws of any state for storage of human bodies or parts thereof.

(2) "Decedent" means a deceased individual and includes a stillborn infant or fetus.

(3) "Donor" means an individual who makes a gift of all or part of his body.

(4) "Hospital" means a hospital licensed, accredited, or approved under the laws of any state; includes a hospital operated by the United States government, a state, or a subdivision thereof, although not required to be licensed under state laws.

(5) "Part" means organs, tissues, eyes, bones, arteries, blood, other fluids, and any other portions of a human body.

(6) "Person" means an individual, corporation, government, or governmental subdivision or agency, business trust, estate, trust, partnership, or association or any other legal entity.

(7) "Physician" or "surgeon" means a physician or surgeon licensed or authorized to practice under the laws of any state.

(8) "State" includes any state, district, commonwealth, territory, insular possession, and any other area subject to the legislative authority of the United States of America.

History: En. Sec. 1, Ch. 340, L. 1969; R.C.M. 1947, 69-2315.

72-17-103. Uniformity of interpretation. This chapter shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

History: En. Sec. 8, Ch. 340, L. 1969; R.C.M. 1947, 69-2322.

72-17-104. Chapter subject to autopsy laws. The provisions of this chapter are subject to the laws of this state prescribing powers and duties with respect to autopsies.

History: En. Sec. 7, Ch. 340, L. 1969; R.C.M. 1947, 69-2321(c).

Part 2

Execution and Operation of Anatomical Gift

72-17-201. Persons who may make gift — priorities — donee not to accept over objection of prior right. (1) Any individual of sound mind and 18 years of age or more may give all or any part of his body for any purpose specified in 72-17-202, the gift to take effect upon death.

(2) Any of the following persons, in order of priority stated, when persons in prior classes are not available at the time of death and in the absence of

actual notice of contrary indications by the decedent or actual notice of opposition by a member of the same or a prior class, may give all or any part of the decedent's body for any purpose specified in 72-17-202:

(a) the spouse;
(b) an adult son or daughter;
(c) either parent;
(d) an adult brother or sister;
(e) a guardian of the person of the decedent at the time of his death.

(3) The persons authorized by subsection (2) may make the gift after or immediately before death.

(4) If the donee has actual notice of contrary indications by the decedent or that a gift by a member of a class is opposed by a member of the same or a prior class, the donee shall not accept the gift.

History: En. Sec. 2, Ch. 340, L. 1969; R.C.M. 1947, 69-2316(a) thru (c).

72-17-202. Persons who may become donees — permissible purposes of gift. The following persons may become donees of gifts of bodies or parts thereof for the purposes stated:

(1) any hospital, surgeon, or physician for medical or dental education, research, advancement of medical or dental science, therapy, or transplantation;

(2) any accredited medical or dental school, college, or university for education, research, advancement of medical or dental science, or therapy;

(3) any bank or storage facility for medical or dental education, research, advancement of medical or dental science, therapy, or transplantation; or

(4) any specified individual for therapy or transplantation needed by him.

History: En. Sec. 3, Ch. 340, L. 1969; R.C.M. 1947, 69-2317.

72-17-203. Rights of donee paramount. The rights of the donee created by the gift are paramount to the rights of others, except as provided by 72-17-104.

History: En. Sec. 2, Ch. 340, L. 1969; R.C.M. 1947, 69-2316(e).

72-17-204. Manner of executing gift — effectiveness. (1) A gift of all or part of the body under 72-17-201(1) may be made by will. The gift becomes effective upon the death of the testator without waiting for probate. If the will is not probated or if it is declared invalid for testamentary purposes, the gift, to the extent that it has been acted upon in good faith, is nevertheless valid and effective.

(2) A gift of all or part of the body under 72-17-201(1) may also be made by document other than a will. The gift becomes effective upon the death of the donor. The document, which may be a card designed to be carried on the person, must be signed by the donor in the presence of two witnesses who must sign the document in his presence. If the donor cannot sign, the document may be signed for him at his direction and in his presence in the presence of two witnesses who must sign the document in his presence. Delivery of the document of gift during the donor's lifetime is not necessary to make the gift valid.

(3) Any gift by a person designated in 72-17-201(2) shall be made by a document signed by him or made by his telegraphic, recorded telephonic, or other recorded message.

History: **En. Sec. 4, Ch. 340, L. 1969; R.C.M. 1947, 69-2318(a), (b), (e).**

72-17-205. Specified or unspecified donee — powers and duties of physician. (1) The gift may be made to a specified donee or without specifying a donee. If the latter, the gift may be accepted by the attending physician as donee upon or following death. If the gift is made to a specified donee who is not available at the time and place of death, the attending physician upon or following death, in the absence of any expressed indication that the donor desired otherwise, may accept the gift as donee.

(2) The physician who becomes a donee under this section shall not participate in the procedures for removing or transplanting a part.

History: **En. Sec. 4, Ch. 340, L. 1969; R.C.M. 1947, 69-2318(c).**

72-17-206. Designation of physician by donor — absence of designation. The donor may designate in his will, card, or other document of gift the surgeon or physician to carry out the appropriate procedures, except as provided in 72-17-205 and 72-17-210(2). In the absence of a designation or if the designee is not available, the donee or other person authorized to accept the gift may employ or authorize any surgeon or physician for the purpose, except as provided in 72-17-205 and 72-17-210(2).

History: **En. Sec. 4, Ch. 340, L. 1969; R.C.M. 1947, 69-2318(d).**

72-17-207. Gift authorizes examination. A gift of all or part of a body authorizes any examination necessary to assure medical acceptability of the gift for the purposes intended.

History: **En. Sec. 2, Ch. 340, L. 1969; R.C.M. 1947, 69-2316(d).**

72-17-208. Delivery of document to expedite procedures — delivery not necessary to validity. (1) If the gift is made by the donor to a specified donee, the will, card, or other document or an executed copy thereof may be delivered to the donee to expedite the appropriate procedures immediately after death. Delivery is not necessary to the validity of the gift.

(2) The will, card, or other document or an executed copy thereof may be deposited in any hospital, bank or storage facility, or registry office that accepts it for safekeeping or for facilitation of procedures after death.

(3) On request of any interested party upon or after the donor's death, the person in possession shall produce the document for examination.

History: **En. Sec. 5, Ch. 340, L. 1969; R.C.M. 1947, 69-2319.**

72-17-209. Amendment or revocation of gift. (1) If the will, card, or other document or executed copy thereof has been delivered to a specified donee, the donor may amend or revoke the gift by:

(a) the execution and delivery to the donee of a signed statement;

(b) an oral statement made in the presence of two persons and communicated to the donee;

(c) a statement during a terminal illness or injury addressed to an attending physician and communicated to the donee; or

(d) a signed card or document found on his person or in his effects.

(2) Any document of gift which has not been delivered to the donee may be revoked by the donor in the manner set out in subsection (1) or by destruction, cancellation, or mutilation of the document and all executed copies thereof.

(3) Any gift made by a will may also be amended or revoked in the manner provided for amendment or revocation of wills or as provided in subsection (1).

History: **En. Sec. 6, Ch. 340, L. 1969; R.C.M. 1947, 69-2320.**

72-17-210. Rights and duties at death. (1) The donee may accept or reject the gift. If the donee accepts a gift of the entire body, he may, subject to the terms of the gift, authorize embalming and the use of the body in funeral services. If the gift is of a part of the body, the donee, upon the death of the donor and prior to embalming, shall cause the part to be removed without unnecessary mutilation. After removal of the part, custody of the remainder of the body vests in the surviving spouse, next of kin, or other persons under obligation to dispose of the body.

(2) The time of death shall be determined by a physician who tends the donor at his death or, if none, the physician who certifies the death. The physician who tends the donor at his death or, if none, the physician who certifies the death shall not participate in the procedures for removing or transplanting a part.

History: **En. Sec. 7, Ch. 340, L. 1969; R.C.M. 1947, 69-2321(a), (b).**

CHAPTERS 18 AND 19

RESERVED

CHAPTER 20

TRUSTS IN GENERAL

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Part 5 — Transfer of Interest in Trust

72-20-501. Transfer to be in writing.

Part 1

Nature and Creation

72-20-101. Trusts classified. A trust is either:

(1) voluntary; or

(2) involuntary.

History: En. Sec. 2950, Civ. C. 1895; re-en. Sec. 5364, Rev. C. 1907; re-en. Sec. 7878, R.C.M. 1921; Cal. Civ. C. Sec. 2215; Field Civ. C. Sec. 1167; re-en. Sec. 7878, R.C.M. 1935; R.C.M. 1947, 86-201.

72-20-102. Voluntary trust defined. A voluntary trust is an obligation arising out of a personal confidence reposed in and voluntarily accepted by one for the benefit of another.

History: En. Sec. 2951, Civ. C. 1895; re-en. Sec. 5365, Rev. C. 1907; re-en. Sec. 7879, R.C.M. 1921; Cal. Civ. C. Sec. 2216; Field Civ. C. Sec. 1168; re-en. Sec. 7879, R.C.M. 1935; R.C.M. 1947, 86-202.

72-20-103. Involuntary trust defined. An involuntary trust is one which is created by operation of law.

History: En. Sec. 2952, Civ. C. 1895; re-en. Sec. 5366, Rev. C. 1907; re-en. Sec. 7880, R.C.M. 1921; Cal. Civ. C. Sec. 2217; Field Civ. C. Sec. 1169; re-en. Sec. 7880, R.C.M. 1935; R.C.M. 1947, 86-203.

72-20-104. Parties — trustor, trustee, and beneficiary. The person whose confidence creates the trust is called the trustor; the person in whom confidence is reposed is called the trustee; and the person for whose benefit the trust is created is called the beneficiary.

History: En. Sec. 2953, Civ. C. 1895; re-en. Sec. 5367, Rev. C. 1907; re-en. Sec. 7881, R.C.M. 1921; Cal. Civ. C. Sec. 2218; Field Civ. C. Sec. 1170; re-en. Sec. 7881, R.C.M. 1935; R.C.M. 1947, 86-204.

72-20-105. What constitutes one a trustee. Every person who voluntarily assumes a relation of personal confidence with another is deemed a trustee, within the meaning of parts 1 through 3, not only as to the person who reposes such confidence but also as to all persons of whose affairs he thus acquires information which was given to such person in the like confidence or over whose affairs he by such confidence obtains any control.

History: En. Sec. 2954, Civ. C. 1895; re-en. Sec. 5368, Rev. C. 1907; re-en. Sec. 7882, R.C.M. 1921; Cal. Civ. C. Sec. 2219; Field Civ. C. Sec. 1171; re-en. Sec. 7882, R.C.M. 1935; R.C.M. 1947, 86-205.

72-20-106. Purpose for which trust may be created. A trust may be created for any purpose for which a contract may lawfully be made, except as otherwise prescribed by the laws on uses and trusts and on transfers.

History: En. Sec. 2955, Civ. C. 1895; re-en. Sec. 5369, Rev. C. 1907; re-en. Sec. 7883, R.C.M. 1921; Cal. Civ. C. Sec. 2220; Field Civ. C. Sec. 1172; re-en. Sec. 7883, R.C.M. 1935; R.C.M. 1947, 86-206.

72-20-107. Voluntary trust — how created as to trustor. Subject to the provisions of 72-24-102, a voluntary trust is created, as to the trustor and beneficiary, by any words or acts of the trustor indicating with reasonable certainty:

(1) an intention on the part of the trustor to create a trust; and

(2) the subject, purpose, and beneficiary of the trust.

History: En. Sec. 2956, Civ. C. 1895; re-en. Sec. 5370, Rev. C. 1907; re-en. Sec. 7884, R.C.M. 1921; Cal. Civ. C. Sec. 2221; Field Civ. C. Sec. 1173; re-en. Sec. 7884, R.C.M. 1935; R.C.M. 1947, 86-207.

72-20-108. Voluntary trust — how created as to trustee. Subject to the provisions of 72-24-102, a voluntary trust is created, as to the trustee, by any words or acts of his indicating with reasonable certainty:

(1) his acceptance of the trust or his acknowledgment, made upon sufficient consideration, of its existence; and

(2) the subject, purpose, and beneficiary of the trust.

History: En. Sec. 2957, Civ. C. 1895; re-en. Sec. 5371, Rev. C. 1907; re-en. Sec. 7885, R.C.M. 1921; Cal. Civ. C. Sec. 2222; Field Civ. C. Sec. 1174; re-en. Sec. 7885, R.C.M. 1935; R.C.M. 1947, 86-208.

72-20-109. Recording of trust instrument — constructive notice. Declarations of trust and trust agreements, duly executed and acknowledged, and wills creating trusts may be recorded in the office of the county clerk and recorder of the county in which the principal office of the trustee is located and when lands are the subject of the trust may also be recorded in the office of the county clerk and recorder of the county in which the lands are situated, which are the subject of such trust, and when so recorded shall be constructive notice to all persons dealing with the trustees or the trust property of the powers, duties, obligations, limitations, liabilities, and rights of the trustees and beneficiaries thereunder and of all the terms, conditions, and limitations of such declaration of trust, trust agreement, or will.

History: En. Sec. 1, Ch. 218, L. 1921; re-en. Sec. 7907, R.C.M. 1921; re-en. Sec. 7907, R.C.M. 1935; R.C.M. 1947, 86-406.

72-20-110. Involuntary trustee — person wrongfully detaining. One who wrongfully detains a thing is an involuntary trustee thereof for the benefit of the owner.

History: En. Sec. 2958, Civ. C. 1895; re-en. Sec. 5372, Rev. C. 1907; re-en. Sec. 7886, R.C.M. 1921; Cal. Civ. C. Sec. 2223; Field Civ. C. Sec. 1175; re-en. Sec. 7886, R.C.M. 1935; R.C.M. 1947, 86-209.

72-20-111. Involuntary trust — fraud, mistake, wrongful act. One who gains a thing by fraud, accident, mistake, undue influence, the violation of a trust, or other wrongful act is, unless he has some other or better right thereto, an involuntary trustee of the thing gained for the benefit of the person who would otherwise have had it.

History: En. Sec. 2959, Civ. C. 1895; re-en. Sec. 5373, Rev. C. 1907; re-en. Sec. 7887, R.C.M 1921; Cal. Civ. C. Sec. 2224; Field Civ. C. Sec. 1176; re-en. Sec. 7887, R.C.M. 1935; R.C.M. 1947, 86-210.

Part 2

Obligations of Trustee

72-20-201. Trustee's obligation of good faith. In all matters connected with his trust, a trustee is bound to act in the highest good faith toward his beneficiary and may not obtain any advantage therein over the latter by the slightest misrepresentation, concealment, threat, or adverse pressure of any kind.

History: En. Sec. 2970, Civ. C. 1895; re-en. Sec. 5374, Rev. C. 1907; re-en. Sec. 7888, R.C.M. 1921; Cal. Civ. C. Sec. 2228; Field Civ. C. Sec. 1177; re-en. Sec. 7888, R.C.M. 1935; R.C.M. 1947, 86-301.

72-20-202. Trustee's influence not to be used for his advantage. A trustee may not use the influence which his position gives to him to obtain any advantage from his beneficiary.

History: En. Sec. 2973, Civ. C. 1895; re-en. Sec. 5377, Rev. C. 1907; re-en. Sec. 7891, R.C.M. 1921; Cal. Civ. C. Sec. 2231; Field Civ. C. Sec. 1180; re-en. Sec. 7891, R.C.M. 1935; R.C.M. 1947, 86-304.

72-20-203. Trustee not to use property for his own benefit — liability. (1) A trustee may not use or deal with the trust property for his own benefit or for any other purpose unconnected with the trust in any manner.

(2) A trustee who uses or disposes of the trust property contrary to subsection (1) may, at the option of the beneficiary, be required to account for all profits so made or to pay the value of its use and, if he has disposed thereof, to replace it with its fruits or to account for its proceeds with interest.

History: En. Secs. 2971, 2979, Civ. C. 1895; re-en. Secs. 5375, 5383, Rev. C. 1907; re-en. Secs. 7889, 7897, R.C.M. 1921; Cal. Civ. C. Secs. 2229, 2237; Field Civ. C. Secs. 1178, 1186; re-en. Secs. 7889, 7897, R.C.M. 1935; R.C.M. 1947, 86-302, 86-310.

72-20-204. Conflict of interest prohibited — exceptions. Neither a trustee nor any of his agents may take part in any transaction concerning the trust in which he or anyone for whom he acts as agent has an interest, present or contingent, adverse to that of his beneficiary, except as follows:

(1) when the beneficiary, having capacity to contract, with full knowledge of the motives of the trustee and of all other facts concerning the transaction which might affect his own decision and without the use of any influence on the part of the trustee, permits him to do so;

(2) when the proper court, upon the like information of the facts, grants the like permission, the beneficiary not having capacity to contract; or

(3) when some of the beneficiaries, having capacity to contract and some not having it, the former grant permission for themselves and the proper court for the latter, in the manner above prescribed.

History: **En. Sec. 2972, Civ. C. 1895; re-en. Sec. 5376, Rev. C. 1907; re-en. Sec. 7890, R.C.M. 1921; Cal. Civ. C. Sec. 2230; Based on Field Civ. C. Sec. 1179; re-en. Sec. 7890, R.C.M. 1935; R.C.M. 1947, 86-303.**

72-20-205. Trustee not to assume adverse trust. No trustee, so long as he remains in the trust, may undertake another trust adverse in its nature to the interest of his beneficiary in the subject of the trust without the consent of the latter.

History: **En. Sec. 2974, Civ. C. 1895; re-en. Sec. 5378, Rev. C. 1907; re-en. Sec. 7892, R.C.M. 1921; Cal. Civ. C. Sec. 2232; Field Civ. C. Sec. 1181; re-en. Sec. 7892, R.C.M. 1935; R.C.M. 1947, 86-305.**

72-20-206. Duty to disclose adverse interest. If a trustee acquires any interest or becomes charged with any duty adverse to the interest of his beneficiary in the subject of the trust, he must immediately inform the latter thereof and may be at once removed.

History: **En. Sec. 2975, Civ. C. 1895; re-en. Sec. 5379, Rev. C. 1907; re-en. Sec. 7893, R.C.M. 1921; Cal. Civ. C. Sec. 2233; Field Civ. C. Sec. 1182; re-en. Sec. 7893, R.C.M. 1935; R.C.M. 1947, 86-306.**

72-20-207. Violation of obligations as fraud. Every violation of the provisions of the preceding sections of this chapter is a fraud against the beneficiary of the trust.

History: **En. Sec. 2976, Civ. C. 1895; re-en. Sec. 5380, Rev. C. 1907; re-en. Sec. 7894, R.C.M. 1921; Cal. Civ. C. Sec. 2234; Field Civ. C. Sec. 1183; re-en. Sec. 7894, R.C.M. 1935; R.C.M. 1947, 86-307.**

72-20-208. Presumption against trustees. All transactions between a trustee and his beneficiary during the existence of the trust or while the influence acquired by the trustee remains by which he obtains any advantage from his beneficiary are presumed to be entered into by the latter without sufficient consideration and under undue influence.

History: **En. Sec. 2977, Civ. C. 1895; re-en. Sec. 5381, Rev. C. 1907; re-en. Sec. 7895, R.C.M. 1921; Cal. Civ. C. Sec. 2235; Field Civ. C. Sec. 1184; re-en. Sec. 7895, R.C.M. 1935; R.C.M. 1947, 86-308.**

72-20-209. Trustee mingling trust property with his own. A trustee who willfully and unnecessarily mingles the trust property with his own so as to constitute himself in appearance its absolute owner is liable for its safety in all events.

History: En. Sec. 2978, Civ. C. 1895; re-en. Sec. 5382, Rev. C. 1907; re-en. Sec. 7896, R.C.M. 1921; Cal. Civ. C. Sec. 2236; Field Civ. C. Sec. 1185; re-en. Sec. 7896, R.C.M. 1935; R.C.M. 1947, 86-309.

72-20-210. Measure of liability for unauthorized but good faith use or disposal of trust property. A trustee who uses or disposes of the trust property in any manner not authorized by the trust but in good faith and with intent to serve the interests of the beneficiary is liable only to make good whatever is lost to the beneficiary by his error.

History: En. Sec. 2980, Civ. C. 1895; re-en. Sec. 5384, Rev. C. 1907; re-en. Sec. 7898, R.C.M. 1921; Cal. Civ. C. Sec. 2238; Field Civ. C. Sec. 1187; re-en. Sec. 7898, R.C.M. 1935; R.C.M. 1947, 86-311.

72-20-211. Cotrustees — how far liable for each other. A trustee is responsible for the wrongful acts of a cotrustee to which he consented or which by his negligence he enabled the latter to commit but for no others.

History: En. Sec. 2981, Civ. C. 1895; re-en. Sec. 5385, Rev. C. 1907; re-en. Sec. 7899, R.C.M. 1921; Cal. Civ. C. Sec. 2239; Field Civ. C. Sec. 1188; re-en. Sec. 7899, R.C.M. 1935; R.C.M. 1947, 86-312.

Part 3

Rights and Duties of Third Persons

72-20-301. Third person transferee — when involuntary trustee. Everyone to whom property is transferred in violation of a trust holds the same as an involuntary trustee under such trust, unless he purchased it in good faith and for a valuable consideration.

History: En. Sec. 2990, Civ. C. 1895; re-en. Sec. 5386, Rev. C. 1907; re-en. Sec. 7900, R.C.M. 1921; Cal. Civ. C. Sec. 2243; Field Civ. C. Sec. 1189; re-en. Sec. 7900, R.C.M. 1935; R.C.M. 1947, 86-313.

72-20-302. Third person transferor — when must see to application of trust property. One who actually and in good faith transfers any money or other property to a trustee, as such, is not bound to see to the application thereof, and his rights can in no way be prejudiced by a misapplication thereof by the trustee. Other persons must, at their peril, see to the proper application of money or other property paid or delivered by them.

History: En. Sec. 2991, Civ. C. 1895; re-en. Sec. 5387, Rev. C. 1907; re-en. Sec. 7901, R.C.M. 1921; Cal. Civ. C. Sec. 2244; Field Civ. C. Sec. 1190; re-en. Sec. 7901, R.C.M. 1935; R.C.M. 1947, 86-314.

Part 4

Trustee Accounts

72-20-401. Application of part. This part shall not apply to resulting trusts, constructive trusts, business trusts where certificates of beneficial interest are issued to the beneficiaries, investment trusts, voting trusts, insurance trusts prior to the death of the insured, trusts in the nature of mortgages or pledges, trusts created by judgment or decree of a federal court or of the district court when not sitting in probate, liquidation trusts, or trusts for the sole purpose of paying dividends, interest or interest coupons, salaries, wages, or pensions; nor shall this part apply to executors, administrators, or guardians.

History: **En. Sec. 1, Ch. 24, L. 1969; R.C.M. 1947, 86-513(part).**

72-20-402. Waiver of accounts — additional duties in instrument. (1) The settlor of any trust governed by this part may waive any or all of the provisions of this part requiring periodical statements to beneficiaries or may add additional duties in the instrument creating the trust.

(2) Any beneficiary entitled to an accounting under this part may waive such an accounting by a separate instrument delivered to the trustee or trustees.

History: **En. Sec. 1, Ch. 24, L. 1969; R.C.M. 1947, 86-513(part).**

72-20-403. Annual statement to income beneficiary required. The trustee or trustees appointed by any will, deed, or agreement executed before or after July 1, 1969, shall mail or deliver at least annually to each income trust beneficiary a written itemized statement of all current receipts and disbursements made by the trustee of the funds of the trust, both principal and income, and upon the request of any such beneficiary shall furnish him an itemized statement of all property then held by such trustee and may also file any such statement in the district court of the county in which the trustee or one of the trustees resides.

History: **En. Sec. 1, Ch. 24, L. 1969; R.C.M. 1947, 86-513(part).**

72-20-404. Permissive accounts — intermediate — final. (1) In addition to the statements provided for in 72-20-403, any such trustee or trustees, whenever it or they so desire, may file in the district court of the county in which the trustees or one of the trustees resides an intermediate account under oath showing:

(a) the period covered by the account;

(b) the total principal with which the trustee is chargeable according to the last preceding account or the inventory if there is no preceding account;

(c) an itemized statement of all principal funds received and disbursed during such period;

(d) an itemized statement of all income received and disbursed during such period, unless waived;

(e) the balance of such principal and income remaining at the close of such period and how invested;

(f) the names and addresses of all living beneficiaries, including contingent beneficiaries, of the trust and a statement as to any such beneficiary known to be under legal disability;

(g) a description of any possible unborn or unascertained beneficiary and his interest in the trust fund.

(2) In addition thereto, after the time for termination of the trust shall have arrived, the trustee or trustees may file a final account in similar manner.

History: **En. Sec. 1, Ch. 24, L. 1969; R.C.M. 1947, 86-513(part).**

72-20-405. Account upon petition of settlor or beneficiary. Upon the petition of any settlor or of any beneficiary of such a trust, after due notice thereof to the trustee, the district court in the county where the trustee or one of the trustees resides may direct the trustee or trustees thereof to file in said court such an account at any time subsequent to 1 year from the day on which such a report was last filed or, if none, then after 1 year from the inception of the trust.

History: En. Sec. 1, Ch. 24, L. 1969; R.C.M. 1947, 86-513(part).

72-20-406. Notice of account filing and return day. (1) When any such account shall have been filed, the clerk of the court where filed shall fix a return day therefor and issue a notice as provided for herein. If each of the beneficiaries and the guardians and guardians ad litem, if any, is personally served with a copy of the notice, whether within or outside the state of Montana, at least 25 days prior to the return day, then no publication of the notice shall be required; otherwise the trustee or trustees shall cause notice as provided for herein to be given by publishing the same at least once a week for 3 successive weeks preceding the return day, the first publication to be at least 25 days preceding the return day, such publication to be in a newspaper of general circulation in the county or, if none, then in an adjoining county. In any event, at least 25 days prior to the return day a copy of the notice shall be either served upon each beneficiary not represented by guardian or guardian ad litem or mailed to each such beneficiary not so served at such beneficiary's address last known to the trustee and shall be either served upon each guardian and guardian ad litem or mailed to each such guardian and guardian ad litem not so served at such guardian's or guardian ad litem's address last known to the trustee.

(2) Proof of service of the notice may be made by affidavit, as provided for service of summons in civil actions, or by written admission of service signed by the person served.

(3) The notice shall state:

(a) the time and place for the return day;

(b) the name or names of the trustee or trustees who have filed the account;

(c) that the account has been filed;

(d) that the court is asked to settle such account; and

(e) that any objections or exceptions thereto must be filed with the clerk of said court on or before such return day.

History: En. Sec. 1, Ch. 24, L. 1969; R.C.M. 1947, 86-513(part).

72-20-407. Objections to account — hearing — decree. (1) Upon or before the return day, any beneficiary of the trust may file his written objections or exceptions to the account filed or to any action of the trustee or trustees set forth therein.

(2) The court may appoint either the legal guardian of a beneficiary or a guardian ad litem to represent the interest of any such beneficiary who is an infant or of unsound mind or otherwise legally incompetent or who is yet unborn or unascertained, and such beneficiary shall be bound by any action taken by such representative. Every unborn or unascertainable beneficiary shall be concluded by any action taken by the court for or against any living

beneficiary of the same class or whose interests are similar to the interests of such unborn or unascertainable beneficiary.

(3) At the same time or at some later day fixed by the court if so requested by one or more of the parties, the court, without the intervention of a jury and after hearing all the evidence submitted, shall determine the correctness of the account and the validity and propriety of all actions of the trustee or trustees set forth therein, including the purchase, retention, and disposition of any of the property and funds of the trust and shall render its decree either approving or disapproving the same or any part thereof and, in addition, may surcharge the trustee or trustees for all losses, if any, caused by negligent or willful breaches of trust.

History: **En. Sec. 1, Ch. 24, L. 1969; R.C.M. 1947, 86-513(part).**

72-20-408. Final nature of decree. The decree so rendered shall be deemed final, conclusive, and binding upon all the parties interested, including all incompetent, unborn, and unascertained beneficiaries of the trust, subject only to the right of appeal hereinafter stated.

History: **En. Sec. 1, Ch. 24, L. 1969; R.C.M. 1947, 86-513(part).**

72-20-409. Appeal. The decree so rendered is a final order from which any party in interest may appeal as in civil actions to the supreme court of the state of Montana.

History: **En. Sec. 1, Ch. 24, L. 1969; R.C.M. 1947, 86-513(part); amd. Sec. 30, Ch. 6, L. 1979.**

Part 5

Transfer of Interest in Trust

72-20-501. Transfer to be in writing. An interest in an existing trust can be transferred only by operation of law or by a written instrument, subscribed by the person making the transfer or by his agent.

History: **En. Sec. 1530, Civ. C. 1895; re-en. Sec. 4630, Rev. C. 1907; re-en. Sec. 6877, R.C.M. 1921; Cal. Civ. C. Sec. 1135; Based on Field Civ. C. Sec. 495; re-en. Sec. 6877, R.C.M. 1935; R.C.M. 1947, 67-1701.**

CHAPTER 21

TRUSTEES' POWERS ACT

Part 1 — General Provisions

Section
72-21-101. Short title.
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Part 2 — Trustees' Powers—Limitations

72-21-201. Limitation of powers by trust instrument — incorporation by reference.
72-21-202. Powers of trustee.
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Part 1

General Provisions

72-21-101. Short title. This chapter may be cited as the "Montana Trustees' Powers Act".

History: **En. 86-910 by Sec. 9, Ch. 297, L. 1974; R.C.M. 1947, 86-910.**

72-21-102. Applicability. Except as specifically provided in the trust, the provisions of this chapter apply to any trust established after March 25, 1974, and to any trust asset acquired by the trustee after March 25, 1974.

History: **En. 86-908 by Sec. 7, Ch. 297, L. 1974; R.C.M. 1947, 86-908.**

72-21-103. Uniformity of construction. This chapter shall be construed to effectuate its general purpose to make uniform the law of those states which enact it.

History: **En. 86-909 by Sec. 8, Ch. 297, L. 1974; R.C.M. 1947, 86-909.**

72-21-104. Definitions — prudent man standard. As used in this chapter, the following definitions apply:

(1) "Trust" means an express trust created by a trust instrument, including a will, whereby a trustee has the duty to administer a trust asset for the benefit of a named or otherwise described income or principal beneficiary or both. "Trust" does not include a resulting or constructive trust, a business trust which provides for certificates to be issued to the beneficiary, an investment trust, a voting trust, a security instrument, a trust created by the judgment or decree of a court not sitting in probate, a liquidation trust, or a trust for the primary purpose of paying dividends, interests, interest coupons, salaries, wages, pensions or profits, or employee benefits of any kind, an instrument wherein a person is nominee or escrowee for another, a trust created in deposits in any financial institution, or other trust the nature of which does not admit of general trust administration.

(2) "Trustee" means an original, added, or successor trustee.

(3) "Prudent man" means a trustee who in investing, reinvesting, purchasing, acquiring, selling, and managing property for another shall exercise the judgment and care under the circumstances then prevailing which men of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital. Within the limitations of the foregoing standard and subject to any express provisions or limitations contained in any particular trust instrument, a trustee is authorized to acquire every kind of property, real, personal, or mixed, and every kind of investment, specifically including, but not by way of limitation, corporate obligations of every kind

and stocks, preferred or common, which men of prudence, discretion, and intelligence acquire for their own account.

History: **En. 86-902 by Sec. 1, Ch. 297, L. 1974; R.C.M. 1947, 86-902.**

Part 2

Trustees' Powers — Limitations

72-21-201. Limitation of powers by trust instrument — incorporation by reference. (1) The trustee has all powers conferred upon him by the provisions of this chapter unless limited in the trust instrument.

(2) An instrument which is not a trust under 72-21-104 (1) may incorporate any part of this chapter by reference.

History: **En. 86-903 by Sec. 2, Ch. 297, L. 1974; R.C.M. 1947, 86-903.**

72-21-202. Powers of trustee. (1) From time of creation of the trust until final distribution of the assets of the trust, a trustee has the power to perform, without court authorization, every act which a prudent man would perform for the purposes of the trust, including but not limited to the powers specified in subsection (2).

(2) A trustee has the power, subject to subsection (1) of this section and to 72-21-203:

(a) to collect, hold, and retain trust assets received from a trustor until, in the judgment of the trustee, disposition of the assets should be made; and the assets may be retained even though they include an asset in which the trustee is personally interested or which is not otherwise a qualified investment;

(b) to receive additions to the assets of the trust from any source;

(c) to continue or participate in the operation of any business or other enterprise and to effect incorporation, dissolution, or other change in the form of the organization of the business or enterprise;

(d) to acquire an undivided interest in a trust asset in which the trustee, in any trust capacity, holds an undivided interest;

(e) to invest and reinvest trust assets in accordance with the provisions of the trust or as provided by law;

(f) to deposit trust funds in a bank, including a bank operated by the trustee;

(g) to invest trust funds, including investments, in demand time savings accounts and time certificates of deposit in any bank, including a bank operated by the trustee;

(h) to acquire or dispose of an asset, for cash or on credit, at public or private sale; and to manage, develop, improve, exchange, partition, change the character of, or abandon a trust asset or any interest therein; and to encumber, mortgage, or pledge a trust asset for a term within or extending beyond the term of the trust, in connection with the exercise of any power vested in the trustee;

(i) to make ordinary or extraordinary repairs or alterations in buildings or other structures, to demolish any improvements, to raze existing or erect new party walls or buildings;

(j) to subdivide, develop, or dedicate land to public use; or to make or obtain the vacation of plats and adjust boundaries; or to adjust differences in valuation on exchange or partition by giving or receiving consideration; or to dedicate easements to public use without consideration;

(k) to enter for any purpose into a lease as lessor or lessee, with or without option to purchase or renew, for a term within or extending beyond the term of the trust;

(l) to enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;

(m) to grant an option involving disposition of a trust asset, or to take an option for the acquisition of any asset;

(n) to vote a security, in person or by general or limited proxy, and enter into voting trusts;

(o) to pay calls, assessments, and any other sums chargeable or accruing against or on account of securities;

(p) to sell or exercise stock subscription or conversion rights; to consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise and retain any property received pursuant thereto;

(q) to hold a security in the name of a nominee or in other form without disclosure of the trust so that title to the security may pass by delivery, but the trustee is liable for any act of the nominee in connection with the stock so held;

(r) to insure the assets of the trust against damage or loss and the trustee against liability with respect to third persons;

(s) to borrow money from any source to be repaid from trust assets or otherwise; to advance money for the protection of the trust and for all expenses, losses, and liability sustained in the administration of the trust or because of the holding or ownership of any trust assets, for which advances with any interest the trustee has a lien on the trust assets as against the beneficiary;

(t) to pay or contest any claim; to settle a claim by or against the trust by compromise, arbitration, or otherwise; and to release, in whole or in part, any claim belonging to the trust to the extent that the claim is uncollectible;

(u) to pay taxes, assessments, compensation of the trustee, and other expenses incurred in the collection, care, administration, and protection of the trust;

(v) to allocate items of income or expense to either trust income or principal, as provided by law, including creation of reserves out of income for depreciation, obsolescence, or amortization or for depletion in mineral or timber properties;

(w) to pay any property distributable to a beneficiary under disability, without liability to the trustee, to the beneficiary or for use of the beneficiary either to his parent, his guardian, person with whom he resides, or others;

(x) to effect distribution of property and money in divided or undivided interests and to adjust resulting differences in valuation;

(y) to employ persons, including attorneys, auditors, investment advisors, or agents, even if they are associated with the trustee, to advise or assist the trustee in the performance of his administrative duties;

(z) to prosecute or defend actions, claims, or proceedings for the protection of trust assets and of the trustee in the performance of his duties;

(aa) to execute and deliver all instruments which will accomplish or facilitate the exercise of the powers vested in the trustee.

History: En. 86-904 by Sec. 3, Ch. 297, L. 1974; R.C.M. 1947, 86-904(1), (3); amd. Sec. 1, Ch. 93, L. 1981.

Compiler's Comments

1981 Amendment: Inserted subsection (2)(g).

72-21-203. Duty to act as fiduciary. In the exercise of his powers, including the powers granted by this chapter, a trustee has a duty to act with due regard to his obligation as a fiduciary.

History: En. 86-904 by Sec. 3, Ch. 297, L. 1974; R.C.M. 1947, 86-904(2).

72-21-204. Court authorization — relief from restriction on power — conflict of interest. (1) This chapter does not affect the power of a court of competent jurisdiction, for cause shown and upon petition of the trustee or affected beneficiary and upon appropriate notice to the affected parties, to relieve a trustee from any restrictions on his power that would otherwise be placed upon him by the trust or by this chapter.

(2) If the duty of the trustee and his individual interest or his interest as trustee of another trust conflict in the exercise of a trust power, the power may be exercised only by court authorization, except as provided in 72-21-202(2)(a), (d), (f), (r), and (x), upon petition of the trustee. Under this section, personal profit or advantage to an affiliated or subsidiary company or association is personal profit to any corporate trustee.

History: En. 86-906 by Sec. 5, Ch. 297, L. 1974; R.C.M. 1947, 86-906.

72-21-205. Transfer of office prohibited. Except as provided in 32-1-807 and 32-1-808, the trustee shall not transfer his office to another or delegate the entire administration of the trust to a cotrustee or another.

History: En. 86-905 by Sec. 4, Ch. 297, L. 1974; amd. Sec. 9, Ch. 401, L. 1975; R.C.M. 1947, 86-905.

72-21-206. Multiple trustees. (1) Any power vested in three or more trustees may be exercised by a majority, but a trustee who has not joined in exercising a power is not liable to the beneficiaries or to others for the consequences of the exercise.

(2) If two or more trustees are appointed to perform a trust and if any of them are unable or refuse to accept the appointment or, having accepted, cease to be trustees, the surviving or remaining trustees shall perform the trust and succeed to all the powers, duties, and discretionary authority given to the trustees jointly.

(3) This section does not excuse a cotrustee from liability for failure either to participate in the administration of the trust or to attempt to prevent a breach of trust.

History: En. 86-907 by Sec. 6, Ch. 297, L. 1974; R.C.M. 1947, 86-907.

CHAPTER 22

CONVEYANCE OF TRUST PROPERTY BY COURT ORDER

Part 1 — Rights, Powers, and Duties

Section
72-22-101. Conveyance in contravention of trust instrument void — exception.
72-22-102. Power of court to order conveyance generally — when.
72-22-103. Power of court to order lease — covenant to pay for improvements.
72-22-104. Mineral lease.
72-22-105. Payor of proceeds not responsible for proper application.

Part 2 — Procedure

72-22-201. Venue.
72-22-202. Petition — contents — filing.
72-22-203. Fixing of time and place of hearing.
72-22-204. Notice of hearing — service — publication.
72-22-205. Unknown heirs or devisees — designation as defendants.
72-22-206. Minors and persons of unsound mind — service on guardian.
72-22-207. Hearing — final order.
72-22-208. Court confirmation of disposition required — conveyance — proceeds.
72-22-209. Validity of final order and conveyance pursuant thereto.
72-22-210. Effect of final order on unknown persons.

Part 1

Rights, Powers, and Duties

72-22-101. Conveyance in contravention of trust instrument void — exception. When any trust is expressed in the instrument creating the trust estate, every sale, conveyance, or other act of the trustee in contravention of the instrument creating the trust shall be absolutely void, except as in this chapter provided.

History: En. Sec. 1, Ch. 265, L. 1947; R.C.M. 1947, 86-315(part).

72-22-102. Power of court to order conveyance generally — when. The district court of the county wherein the property, whether real or personal, or any part thereof held in trust is situate may by order, on such terms and conditions as seem just and proper, authorize and direct any trustee, whether it be a trust created by writing or otherwise, to sell or otherwise dispose of or lease the property for the development of its mineral resources or mortgage all or any part of such trust property, whether real or personal, whenever it appears to the satisfaction of the court that it is necessary, advisable, or for the benefit or for the best interest of the trust estate or of the person or persons beneficially interested therein holding the first and present estate, interest, or use and that it will do no substantial injury to the heirs or next of kin or others in succession, expectancy, reversion, or remainder or the beneficiaries, in respect of such property.

History: En. Sec. 1, Ch. 265, L. 1947; R.C.M. 1947, 86-315(part).

72-22-103. Power of court to order lease — covenant to pay for improvements. The district court may by order, on such terms and conditions as seem to it just and proper, authorize such trustee to lease such property for a term exceeding 5 years, if it appears to the satisfaction of the court that it is for the best interest of the trust estate or the beneficiaries thereof and may authorize such trustee to covenant in the lease to pay, at the end of the term or any renewal term, to the lessee the then fair and reasonable value of any buildings and improvements which may have been erected or placed on the leased premises during such term or renewal term.

History: En. Sec. 2, Ch. 265, L. 1947; R.C.M. 1947, 86-316.

72-22-104. Mineral lease. The district court may by order, on such terms and conditions as may be just and proper, authorize such trustee to lease such property for the purpose of developing the mineral resources of the same for a term of years under the usual terms and conditions and under such terms and conditions as to the court may seem just and equitable.

History: En. Sec. 3, Ch. 265, L. 1947; R.C.M. 1947, 86-317.

72-22-105. Payor of proceeds not responsible for proper application. Any person who shall actually and in good faith pay to any such trustee any money or other proceeds derived from the sale or other disposition or from the mortgaging or leasing of such trust property or any part thereof shall not be responsible for the proper application of such money or other proceeds in accordance with the terms of the trust; and any right, title, or interest derived from such trustee by such person, in consideration of such payment, shall not be impeached or called in question in consequence of any misapplication by such trustee of such money or proceeds so paid.

History: En. Sec. 12, Ch. 265, L. 1947; R.C.M. 1947, 86-326.

Part 2

Procedure

72-22-201. Venue. All actions brought under this chapter must be brought in the county in which the real estate or a portion thereof is situated; provided, that if said real estate is situated in more than one county, said action may be brought or procured in either of said counties and a transcript of the original judgment, certified by the clerk of the court, shall be filed in the office of the clerk of the court in the county other than the one in which said action was brought in which any part of the real estate affected thereby is situated.

History: En. Sec. 5, Ch. 265, L. 1947; R.C.M. 1947, 86-319.

72-22-202. Petition — contents — filing. (1) Application to the court for an order to sell or otherwise dispose of or mortgage such trust property, real or personal, or any part thereof or to lease such trust property, real or personal, or any part thereof shall be by duly verified petition made by such trustee or any person beneficially interested in such property.

(2) Such petition shall set forth:

(a) the nature of the trust estate;

(b) the particular facts making it necessary or proper for the application to be granted;

(c) a description of the trust property to be sold or otherwise disposed of or mortgaged or leased and the interest of the petitioner therein; and

(d) if said order is petitioned for on the ground that it is for the advantage, best interest, and benefit of the trust estate and those interested therein, including minor heirs, if any, that the order be made, in addition to the foregoing facts, in what way an advantage or benefit would accrue to the trust estate or to those interested therein by the granting of such an order prayed for.

(3) Such petition and the notice of hearing thereof shall set forth, so far as appears of record or as known to the petitioner, the names of the beneficiaries and those interested in said trust, and in addition such petition shall set out the places of residence of all persons who have any right, title, interest, estate, or lien and the nature thereof in or upon the trust property or who, by the terms of the instrument creating the trust, are known to the petitioner to have an interest in said trust property. If there be persons having or claiming to have or who at any time thereafter may have any interest in the trust property whose names are unknown, it shall be lawful to include such persons in such petition and the notice of hearing thereof by the name and description of unknown persons interested in the trust property, and to that end such petition and notice, in addition to setting out the names of the persons aforesaid, may contain the following: "and any and all persons, known or unknown, claiming or who might claim any right, title, estate, or interest in or to or any lien or encumbrance upon the real estate in the petition described or any part thereof, whether such claim or possible claim be present or contingent, including any claim or possible claim of dower, inchoate or accrued".

(4) Such petition, together with a copy annexed thereto of the deed, will, or other written instrument creating the trust estate, if any, shall be filed in the office of the clerk of the district court of the county wherein such property or some part thereof is situate.

History: En. Sec. 4, Ch. 265, L. 1947; R.C.M. 1947, 86-318(part).

72-22-203. Fixing of time and place of hearing. Upon the filing of any such petition, the district court shall by order fix a time and place of hearing the same. Such hearing may be at chambers or at a general or special term of the court wherein the proceedings are pending.

History: En. Sec. 4, Ch. 265, L. 1947; R.C.M. 1947, 86-318(part).

72-22-204. Notice of hearing — service — publication. (1) Notice of such hearing stating the time and place thereof and the objects of the petition shall be served upon all persons named in the petition as having any right, title, interest, estate, or lien in or upon the trust property or who, by the terms of the instrument creating such trust, may at any time thereafter have any such right, title, interest, estate, or lien.

(2) When the person on whom the notice of hearing is to be served resides out of the state or has departed from the state or cannot, after due diligence, be found within the state or conceals himself to avoid the service

of notice of hearing or when the defendant is a foreign corporation having no managing or business agent, cashier, secretary, or other officer within the state and an affidavit stating any of these facts is filed with the clerk of the court in which the action is brought and such affidavit also states that a cause of action exists against the defendant in respect to whom the service of notice of hearing is to be made and that he or it is a necessary or proper party to the action, the clerk of the court in which the action is commenced shall cause the service of notice of hearing to be made by publication thereof. Such notice shall be served in the same manner as a summons in a civil action, except that publication thereof shall be made for 2 consecutive weeks in a regularly published newspaper of general circulation in the county wherein such proceedings are pending, or if no such newspaper be published in such county, the publication may be made in such newspaper published in an adjoining county. Service of such notice may be had upon all persons named and described in such petition and notice as unknown persons interested in the trust property by publication of such notice in the same manner and for the same time as in the case of nonresidents whose names are set out in the petition, upon the filing in said court of an affidavit by the petitioner, his agent or attorney stating that there are or that affiant is informed or believes there are certain persons, in addition to those whose names are set out in such petition, who have or claim to have or may have some right, title, interest, estate, or lien in or upon the trust property the nature of which is, as well as the names and places of whom are, to affiant unknown.

History: **En. Sec. 6, Ch. 265, L. 1947; R.C.M. 1947, 86-320.**

72-22-205. Unknown heirs or devisees — designation as defendants. (1) When persons are made defendant by the style and description of unknown heirs, there shall be added to such designation of them the name of the deceased person of whom they shall be claimed or supposed to be the heirs.

(2) When persons are made defendant by the style and description of unknown devisees, there shall be added to such designation the name of the deceased person of whom they shall be claimed or supposed to be devisees.

History: **En. Sec. 7, Ch. 265, L. 1947; R.C.M. 1947, 86-321.**

72-22-206. Minors and persons of unsound mind — service on guardian. In case any person whose name is set out in such petition is a minor or a person of unsound mind, such notice of hearing shall be served upon the duly appointed guardian or other legal representative of such person, if any. If there be none, then the district court in which such proceedings are pending shall appoint any competent person as a guardian ad litem for such person and may compel the person so appointed to act. In such case, service of such notice of hearing shall be had by service on such guardian ad litem.

History: **En. Sec. 8, Ch. 265, L. 1947; R.C.M. 1947, 86-322.**

72-22-207. Hearing — final order. (1) Upon proof being filed of the service of such notice, the court at the time and place therein fixed or to which the hearing may be adjourned shall hear all competent evidence offered for and against the granting of such petition, regulating the order of proof as it may deem best, and shall make and enter a final order upon the application.

(2) If the application is granted, the final order shall authorize the sale or other disposition or the mortgaging or leasing, as the case may be, of such trust property or part thereof in the manner and upon such terms as the court may prescribe.

History: **En. Sec. 9, Ch. 265, L. 1947; R.C.M. 1947, 86-323(part).**

72-22-208. Court confirmation of disposition required — conveyance — proceeds. (1) Any such sale or other disposition or mortgaging or leasing of such trust property by such trustee shall be reported to the court for confirmation and confirmed by the court before the same shall become effective and valid.

(2) Upon such confirmation, such trustee shall make, execute, and deliver, subject to such terms and conditions as the court in its order of confirmation may impose, good and sufficient instruments of conveyance, assignment, and transfer or mortgage or lease, as the case may be.

(3) On receipt by such trustee of the money or other proceeds derived from any such sale or other disposition or mortgaging or leasing of such trust property, such money or other proceeds shall be held, administered, distributed, or otherwise dealt with by such trustee under and pursuant to the terms of the deed, will, or other written instrument creating a trust. Then the court shall, by order and judgment, direct the distribution and administration of such funds or property.

History: **En. Sec. 9, Ch. 265, L. 1947; R.C.M. 1947, 86-323(part).**

72-22-209. Validity of final order and conveyance pursuant thereto. The final order of the court in such proceedings and every deed or other instrument of conveyance, assignment, transfer, mortgage, or lease made, executed, and delivered by such trustee pursuant to any such final order shall be valid and effectual against all persons whose names are set out in such petition and all persons therein named and described as unknown persons interested in the trust property served with notice of hearing as in this chapter provided or appearing voluntarily in the proceedings and consenting to the granting of such order, whether such persons or any of them are in being or not in being, and whatever the nature of their interest and estate in the trust property, whether vested or contingent, in expectancy, in reversion, or in remainder or otherwise at the time of the granting of such order.

History: **En. Sec. 11, Ch. 265, L. 1947; R.C.M. 1947, 86-325.**

72-22-210. Effect of final order on unknown persons. The final order of the court in such proceedings made or had with respect to such unknown persons shall have the same effect and be as binding and conclusive upon them as though they had been named and described in such petition and notice by their proper names; provided, that all such unknown persons so served as in this chapter provided shall have the same right to appear and object to such order and the granting thereof, after such order has been made and entered, as persons would have who are named and described by their proper names in such petition and notice and have been served with such notice by publication, as provided in this chapter.

History: **En. Sec. 10, Ch. 265, L. 1947; R.C.M. 1947, 86-324.**

CHAPTER 23

TRUSTS FOR BENEFIT OF THIRD PERSONS

Part 1 — General Provisions

Section

72-23-101. Applicability of chapter.

Part 2 — Nature and Creation

72-23-201. Creation of trust.
72-23-202. Court appointed trustee — court as trustor.
72-23-203. Declaration of trust.
72-23-204. Declarations of trustor.

Part 3 — Obligations and Powers of Trustee

72-23-301. Trustee to obey declaration of trust.
72-23-302. Standard of care and diligence in execution of trust.
72-23-303. Investment of money by trustee.
72-23-304. Interest on omission to invest trust moneys.
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72-23-503. Trustee's office — how vacated.
72-23-504. Trustee — how discharged.
72-23-505. Duty of trustee as to appointment of successor.
72-23-506. Removal of trustee by court.
72-23-507. Vacant trusteeship filled by court.
72-23-508. Court to appoint trustees — when.

Part 1

General Provisions

72-23-101. Applicability of chapter. The provisions of this chapter apply only to express trusts created for the benefit of another than the trustor and in which the title to the trust property is vested in the trustee; not including, however, those of executors, administrators, and guardians, as such.

History: En. Sec. 3000, Civ. C. 1895; re-en. Sec. 5388, Rev. C. 1907; re-en. Sec. 7902, R.C.M. 1921; Cal. Civ. C. Sec. 2250; Field Civ. C. Sec. 1191; re-en. Sec. 7902, R.C.M. 1935; R.C.M. 1947, 86-401.

Part 2

Nature and Creation

72-23-201. Creation of trust. The mutual consent of a trustor and trustee creates a trust of which the beneficiary may take advantage at any time prior to its rescission.

History: En. Sec. 3001, Civ. C. 1895; re-en. Sec. 5389, Rev. C. 1907; re-en. Sec. 7903, R.C.M. 1921; Cal. Civ. C. Sec. 2251; Field Civ. C. Sec. 1192; re-en. Sec. 7903, R.C.M. 1935; R.C.M. 1947, 86-402.

72-23-202. Court appointed trustee — court as trustor. When a trustee is appointed by a court or public officer, as such, such court or officer is the trustor, within the meaning of the last section.

History: En. Sec. 3002, Civ. C. 1895; re-en. Sec. 5390, Rev. C. 1907; re-en. Sec. 7904, R.C.M. 1921; Cal. Civ. C. Sec. 2252; Field Civ. C. Sec. 1193; re-en. Sec. 7904, R.C.M. 1935; R.C.M. 1947, 86-403.

72-23-203. Declaration of trust. The nature, extent, and object of a trust are expressed in the declaration of trust.

History: En. Sec. 3003, Civ. C. 1895; re-en. Sec. 5391, Rev. C. 1907; re-en. Sec. 7905, R.C.M. 1921; Cal. Civ. C. Sec. 2253; Field Civ. C. Sec. 1194; re-en. Sec. 7905, R.C.M. 1935; R.C.M. 1947, 86-404.

72-23-204. Declarations of trustor. All declarations of a trustor to his trustees in relation to the trust before its acceptance by the trustees or any of them are to be deemed part of the declaration of the trust, except that when a declaration of trust is made in writing, all previous declarations by the same trustor are merged therein.

History: En. Sec. 3004, Civ. C. 1895; re-en. Sec. 5392, Rev. C. 1907; re-en. Sec. 7906, R.C.M. 1921; Cal. Civ. C. Sec. 2254; Field Civ. C. Sec. 1195; re-en. Sec. 7906, R.C.M. 1935; R.C.M. 1947, 86-405.

Part 3

Obligations and Powers of Trustee

72-23-301. Trustee to obey declaration of trust. A trustee must fulfill the purpose of the trust as declared at its creation and must follow all the directions of the trustor given at that time, except as modified by the consent of all parties interested, in the same manner and to the same extent as an employee.

History: En. Sec. 3010, Civ. C. 1895; re-en. Sec. 5393, Rev. C. 1907; re-en. Sec. 7908, R.C.M. 1921; Cal. Civ. C. Sec. 2258; Field Civ. C. Sec. 1196; re-en. Sec. 7908, R.C.M. 1935; R.C.M. 1947, 86-501.

72-23-302. Standard of care and diligence in execution of trust. A trustee, whether he receives any compensation or not, must use at least ordinary care and diligence in the execution of his trust.

History: En. Sec. 3011, Civ. C. 1895; re-en. Sec. 5394, Rev. C. 1907; re-en. Sec. 7909, R.C.M. 1921; Cal. Civ. C. Sec. 2259; Field Civ. C. Sec. 1197; re-en. Sec. 7909, R.C.M. 1935; R.C.M. 1947, 86-502.

72-23-303. Investment of money by trustee. A trustee must invest money received by him under the trust, as fast as he collects a sufficient amount, in such manner as to afford reasonable security and interest for the same.

History: En. Sec. 3013, Civ. C. 1895; re-en. Sec. 5396, Rev. C. 1907; re-en. Sec. 7911, R.C.M. 1921; Cal. Civ. C. Sec. 2261; Field Civ. C. Sec. 1199; re-en. Sec. 7911, R.C.M. 1935; R.C.M. 1947, 86-504.

72-23-304. Interest on omission to invest trust moneys. If a trustee omits to invest the trust moneys according to the last section, he must pay simple interest thereon if such omission is negligent merely and compound interest if it is willful.

History: En. Sec. 3014, Civ. C. 1895; re-en. Sec. 5397, Rev. C. 1907; re-en. Sec. 7912, R.C.M. 1921; Cal. Civ. C. Sec. 2262; Field Civ. C. Sec. 1200; re-en. Sec. 7912, R.C.M. 1935; R.C.M. 1947, 86-505.

72-23-305. Purchase by trustee of claims against trust property. A trustee cannot enforce any claim against the trust property which he purchases after or in contemplation of his appointment as trustee, but he may be allowed by any competent court to charge to the trust property what he has in good faith paid for the claim, upon discharging the same.

History: En. Sec. 3015, Civ. C. 1895; re-en. Sec. 5398, Rev. C. 1907; re-en. Sec. 7913, R.C.M. 1921; Cal. Civ. C. Sec. 2263; Field Civ. C. Sec. 1201; re-en. Sec. 7913, R.C.M. 1935; R.C.M. 1947, 86-506.

72-23-306. Control of discretionary power by court. A discretionary power conferred upon a trustee is presumed not to be left to his arbitrary discretion but may be controlled by the proper court if not reasonably exercised, unless an absolute discretion is clearly conferred by the declaration of trust.

History: En. Sec. 3022, Civ. C. 1895; re-en. Sec. 5401, Rev. C. 1907; re-en. Sec. 7916, R.C.M. 1921; Cal. Civ. C. Sec. 2269; Field Civ. C. Sec. 1204; re-en. Sec. 7916, R.C.M. 1935; R.C.M. 1947, 86-509.

72-23-307. Trustee's powers as agent. A trustee is a general agent for the trust property. His authority is such as is conferred upon him by the declaration of trust and by this chapter and none other. His acts within the scope of his authority bind the trust property to the same extent as the acts of an agent bind his principal.

History: En. Sec. 3020, Civ. C. 1895; re-en. Sec. 5399, Rev. C. 1907; re-en: Sec. 7914, R.C.M. 1921; Cal. Civ. C. Sec. 2267; Field Civ. C. Sec. 1202; re-en. Sec. 7914, R.C.M. 1935; R.C.M. 1947, 86-507.

72-23-308. Cotrustees — unity of action required. Where there are several cotrustees, all must unite in any act to bind the trust property unless the declaration of trust otherwise provides.

History: En. Sec. 3021, Civ. C. 1895; re-en. Sec. 5400, Rev. C. 1907; re-en. Sec. 7915, R.C.M. 1921; Cal. Civ. C. Sec. 2268; Field Civ. C. Sec. 1203; re-en. Sec. 7915, R.C.M. 1935; R.C.M. 1947, 86-508.

Part 4

Rights of Trustee

72-23-401. Reimbursement of trustee. A trustee is entitled to the repayment out of the trust property of all expenses actually and properly incurred by him in the performance of his trust. He is entitled to the repayment of even unlawful expenditures, if they were productive of actual benefit to the estate.

History: En. Sec. 3030, Civ. C. 1895; re-en. Sec. 5402, Rev. C. 1907; re-en. Sec. 7917, R.C.M. 1921; Cal. Civ. C. Sec. 2273; Field Civ. C. Sec. 1205; re-en. Sec. 7917, R.C.M. 1935; R.C.M. 1947, 86-510.

72-23-402. Compensation of trustee. When a declaration of trust created by will or otherwise is silent upon the subject of or the rate or amount of compensation, the trustee is entitled to such compensation as may be reasonable under the circumstances.

History: En. Sec. 3031, Civ. C. 1895; re-en. Sec. 5403, Rev. C. 1907; amd. Sec. 7918, R.C.M. 1921; Cal. Civ. C. Sec. 2274; Field Civ. C. Sec. 1206; re-en. Sec. 7918, R.C.M. 1935; amd. Sec. 1, Ch. 65, L. 1965; R.C.M. 1947, 86-511.

72-23-403. Involuntary trustee — no reimbursement or compensation. An involuntary trustee, who becomes such through his own fault, has none of the rights mentioned in the two preceding sections.

History: En. Sec. 3032, Civ. C. 1895; re-en. Sec. 5404, Rev. C. 1907; re-en. Sec. 7919, R.C.M. 1921; Cal. Civ. C. Sec. 2275; Field Civ. C. Sec. 1207; re-en. Sec. 7919, R.C.M. 1935; R.C.M. 1947, 86-512.

Part 5

Termination of Trust and Office of Trustee — Succession

72-23-501. Trust — how extinguished. A trust is extinguished by the entire fulfillment of its object or by such object becoming impossible or unlawful.

History: En. Sec. 3040, Civ. C. 1895; re-en. Sec. 5405, Rev. C. 1907; re-en. Sec. 7920, R.C.M. 1921; Cal. Civ. C. Sec. 2279; Field Civ. C. Sec. 1208; re-en. Sec. 7920, R.C.M. 1935; R.C.M. 1947, 86-601.

72-23-502. Revocation of trust — consent of beneficiaries — reservation of power. A trust cannot be revoked by the trustor after its acceptance, actual or presumed, by the trustee and beneficiaries, except by the consent of all the beneficiaries, unless the declaration of trust reserves a power of revocation to the trustor, and in that case the power must be strictly pursued.

History: En. Sec. 3041, Civ. C. 1895; re-en. Sec. 5406, Rev. C. 1907; re-en. Sec. 7921, R.C.M. 1921; Cal. Civ. C. Sec. 2280; Field Civ. C. Sec. 1209; re-en. Sec. 7921, R.C.M. 1935; R.C.M. 1947, 86-602.

72-23-503. Trustee's office — how vacated. The office of a trustee is vacated:

(1) by his death; or

(2) by his discharge.

History: En. Sec. 3042, Civ. C. 1895; re-en. Sec. 5407, Rev. C. 1907; re-en. Sec. 7922, R.C.M. 1921; Cal. Civ. C. Sec. 2281; Field Civ. C. Sec. 1210; re-en. Sec. 7922, R.C.M. 1935; R.C.M. 1947, 86-603.

72-23-504. Trustee — how discharged. A trustee can be discharged from his trust only as follows:

(1) by the extinction of the trust;
(2) by the completion of his duties under the trust;
(3) by such means as may be prescribed by the declaration of trust;
(4) by the consent of the beneficiary if he had capacity to contract;
(5) by the judgment of a competent tribunal in a direct proceeding for that purpose that he is of unsound mind; or
(6) by the district court.

History: En. Sec. 3043, Civ. C. 1895; re-en. Sec. 5408, Rev. C. 1907; re-en. Sec. 7923, R.C.M. 1921; Cal. Civ. C. Sec. 2282; Field Civ. C. Sec. 1211; re-en. Sec. 7923, R.C.M. 1935; R.C.M. 1947, 86-604.

72-23-505. Duty of trustee as to appointment of successor. If a trustee procures or assents to his discharge from his office before his trust is fully executed, he must use at least ordinary care and diligence to secure the appointment of a trustworthy successor before accepting his own final discharge.

History: En. Sec. 3012, Civ. C. 1895; re-en. Sec. 5395, Rev. C. 1907; re-en. Sec. 7910, R.C.M. 1921; Cal. Civ. C. Sec. 2260; Field Civ. C. Sec. 1198; re-en. Sec. 7910, R.C.M. 1935; R.C.M. 1947, 86-503.

72-23-506. Removal of trustee by court. The district court may remove any trustee who has violated or is unfit to execute the trust or may accept the resignation of a trustee.

History: En. Sec. 3044, Civ. C. 1895; re-en. Sec. 5409, Rev. C. 1907; re-en. Sec. 7924, R.C.M. 1921; Cal. Civ. C. Sec. 2283; Based on Field Civ. C. Sec. 1212; re-en. Sec. 7924, R.C.M. 1935; R.C.M. 1947, 86-605.

72-23-507. Vacant trusteeship filled by court. The district court may appoint a trustee whenever there is a vacancy and the declaration of trust does not provide a practicable method of appointment.

History: En. Sec. 3050, Civ. C. 1895; re-en. Sec. 5410, Rev. C. 1907; re-en. Sec. 7925, R.C.M. 1921; Cal. Civ. C. Sec. 2287; Based on Field Civ. C. Sec. 1213; re-en. Sec. 7925, R.C.M. 1935; R.C.M. 1947, 86-606.

72-23-508. Court to appoint trustees — when. When a trust exists without any appointed trustee or where all the trustees renounce, die, or are discharged, the district court of the county where the trust property or some portion thereof is situated must appoint another trustee and direct the execution of the trust. The court may, in its discretion, appoint the original number or any less number of trustees.

History: En. Sec. 3052, Civ. C. 1895; re-en. Sec. 5412, Rev. C. 1907; re-en. Sec. 7927, R.C.M. 1921; Cal. Civ. C. Sec. 2289; Based on Field Civ. C. Sec. 1215; re-en. Sec. 7927, R.C.M. 1935; R.C.M. 1947, 86-608.

CHAPTER 24

TRUSTS IN RELATION TO REAL PROPERTY

Part 1 — Nature and Creation

Section

72-24-101. What trusts may exist.
72-24-102. Creation of trusts.
72-24-103. For what purposes express trusts may be created.
72-24-104. Transfer to one for money paid by another — trust presumed.

Part 2 — Powers, Rights, and Duties

72-24-201. Trustees of express trust vested with whole estate.
72-24-202. Authority of grantor over trust property.
72-24-203. Interest of grantee of trust property.
72-24-204. Interests not provided for in trust — reversion to grantor.
72-24-205. Transfer by beneficiary of interest in trust forbidden.
72-24-206. Act of trustee in contravention of trust void.
72-24-207. Power vested in several persons — execution.
72-24-208. Implied or resulting trust — bona fide purchasers protected.
72-24-209. Effect of omitting trust in conveyance — bona fide purchasers protected.
72-24-210. Profits of land liable to creditors in certain cases.
72-24-211. When estate of trustee to cease.

Part 1

Nature and Creation

72-24-101. What trusts may exist. Uses and trusts in relation to real property are those only which are specified in this chapter.

History: En. Sec. 1310, Civ. C. 1895; re-en. Sec. 4536, Rev. C. 1907; re-en. Sec. 6783, R.C.M. 1921; Cal. Civ. C. Sec. 847; re-en. Sec. 6783, R.C.M. 1935; R.C.M. 1947, 86-101.

72-24-102. Creation of trusts. No trust in relation to real property is valid unless created or declared by:

(1) a written instrument, subscribed by the trustee or by his agent thereto authorized by writing;

(2) the instrument under which the trustee claims the estate affected; or

(3) operation of law.

History: En. Sec. 1311, Civ. C. 1895; re-en. Sec. 4537, Rev. C. 1907; re-en. Sec. 6784, R.C.M. 1921; Cal. Civ. C. Sec. 852; Field Civ. C. Sec. 280; re-en. Sec. 6784, R.C.M. 1935; R.C.M. 1947, 86-102.

72-24-103. For what purposes express trusts may be created. Express trusts may be created for any of the following purposes:

(1) to sell real property and apply or dispose of the proceeds in accordance with the instrument creating the trust;

(2) to mortgage or lease real property for the benefit of annuitants or other legatees or for the purpose of satisfying any charge thereon;

(3) to receive the rents and profits of real property and pay them to or apply them to the use of any person, whether ascertained at the time of the creation of the trust or not, for himself or for his family during the life of

such person or for any shorter term, subject to Title 70, chapter 1, part 4; or

(4) to receive the rents and profits of real property and to accumulate the same for the purposes and within the limits prescribed by Title 70, chapter 1, part 4.

History: En. Sec. 1314, Civ. C. 1895; re-en. Sec. 4540, Rev. C. 1907; re-en. Sec. 6787, R.C.M. 1921; Cal. Civ. C. Sec. 857; Based on Field Civ. C. Sec. 285; re-en. Sec. 6787, R.C.M. 1935; R.C.M. 1947, 86-105; amd. Sec. 31, Ch. 6, L. 1979.

72-24-104. Transfer to one for money paid by another — trust presumed. When a transfer of real property is made to one person and the consideration thereof is paid by or for another, a trust is presumed to result in favor of the person by or for whom such payment is made.

History: En. Sec. 1312, Civ. C. 1895; re-en. Sec. 4538, Rev. C. 1907; re-en. Sec. 6785, R.C.M. 1921; Cal. Civ. C. Sec. 853; Field Civ. C. Sec. 281; re-en. Sec. 6785, R.C.M. 1935; R.C.M. 1947, 86-103.

Part 2

Powers, Rights, and Duties

72-24-201. Trustees of express trust vested with whole estate. Except as hereinafter otherwise provided, every express trust in real property, valid as such in its creation, vests the whole estate in the trustees, subject only to the execution of the trust. The beneficiaries take no estate or interest in the property but may enforce the performance of the trust.

History: En. Sec. 1317, Civ. C. 1895; re-en. Sec. 4543, Rev. C. 1907; re-en. Sec. 6790, R.C.M. 1921; Cal. Civ. C. Sec. 863; Field Civ. C. Sec. 291; re-en. Sec. 6790, R.C.M. 1935; R.C.M. 1947, 86-108.

72-24-202. Authority of grantor over trust property. Notwithstanding anything contained in the last section, the author of a trust may, in its creation, prescribe to whom the real property to which the trust relates shall belong in the event of the failure or termination of the trust and may transfer or devise such property, subject to the execution of the trust.

History: En. Sec. 1318, Civ. C. 1895; re-en. Sec. 4544, Rev. C. 1907; re-en. Sec. 6791, R.C.M. 1921; Cal. Civ. C. Sec. 864; Field Civ. C. Sec. 292; re-en. Sec. 6791, R.C.M. 1935; R.C.M. 1947, 86-109.

72-24-203. Interest of grantee of trust property. The grantee or devisee of real property subject to a trust acquires a legal estate in the property as against all persons except the trustees and those lawfully claiming under them.

History: En. Sec. 1319, Civ. C. 1895; re-en. Sec. 4545, Rev. C. 1907; re-en. Sec. 6792, R.C.M. 1921; Cal. Civ. C. Sec. 865; Field Civ. C. Sec. 293; re-en. Sec. 6792, R.C.M. 1935; R.C.M. 1947, 86-110.

72-24-204. Interests not provided for in trust — reversion to grantor. Where an express trust is created in relation to real property, every estate not embraced in the trust and not otherwise disposed of is left in the author of the trust or his successors.

History: En. Sec. 1320, Civ. C. 1895; re-en. Sec. 4546, Rev. C. 1907; re-en. Sec. 6793, R.C.M. 1921; Cal. Civ. C. Sec. 866; Field Civ. C. Sec. 294; re-en. Sec. 6793, R.C.M. 1935; R.C.M. 1947, 86-111.

72-24-205. Transfer by beneficiary of interest in trust forbidden. The beneficiary of a trust for the receipt of the rents and profits of real property or for the payment of an annuity out of such rents and profits cannot transfer or in any manner dispose of his interest in such trust.

History: En. Sec. 1321, Civ. C. 1895; re-en. Sec. 4547, Rev. C. 1907; re-en. Sec. 6794, R.C.M. 1921; Cal. Civ. C. Sec. 867; Based on Field Civ. C. Secs. 295 and 296; re-en. Sec. 6794, R.C.M. 1935; R.C.M. 1947, 86-112.

72-24-206. Act of trustee in contravention of trust void. Where a trust in relation to real property is expressed in the instrument creating the estate, every transfer or other act of the trustee in contravention of the trust is absolutely void.

History: En. Sec. 1323, Civ. C. 1895; re-en. Sec. 4549, Rev. C. 1907; re-en. Sec. 6796, R.C.M. 1921; Cal. Civ. C. Sec. 870; Field Civ. C. Sec. 298; re-en. Sec. 6796, R.C.M. 1935; R.C.M. 1947, 86-114.

72-24-207. Power vested in several persons — execution. Where a power is vested in several persons, all must unite in its execution; but in case any one or more of them are dead, the power may be executed by the survivor or survivors unless otherwise prescribed by the terms of the power.

History: En. Sec. 1316, Civ. C. 1895; re-en. Sec. 4542, Rev. C. 1907; re-en. Sec. 6789, R.C.M. 1921; Cal. Civ. C. Sec. 860; Field Civ. C. Sec. 323; re-en. Sec. 6789, R.C.M. 1935; R.C.M. 1947, 86-107.

72-24-208. Implied or resulting trust — bona fide purchasers protected. No implied or resulting trust can prejudice the rights of a purchaser or encumbrancer of real property for value and without notice of the trust.

History: En. Sec. 1313, Civ. C. 1895; re-en. Sec. 4539, Rev. C. 1907; re-en. Sec. 6786, R.C.M. 1921; Cal. Civ. C. Sec. 856; Field Civ. C. Sec. 284; re-en. Sec. 6786, R.C.M. 1935; R.C.M. 1947, 86-104.

72-24-209. Effect of omitting trust in conveyance — bona fide purchasers protected. Where an express trust is created in relation to real property but is not contained or declared in the grant to the trustee or in an instrument signed by him and recorded in the office with the grant to the trustee, such grant must be deemed absolute in favor of purchasers from such trustee without notice and for a valuable consideration.

History: En. Sec. 1322, Civ. C. 1895; re-en. Sec. 4548, Rev. C. 1907; re-en. Sec. 6795, R.C.M. 1921; Cal. Civ. C. Sec. 869; Based on Field Civ. C. Sec. 297; re-en. Sec. 6795, R.C.M. 1935; R.C.M. 1947, 86-113.

72-24-210. Profits of land liable to creditors in certain cases. When a trust is created to receive the rents and profits of real property and no valid direction for accumulation is given, the surplus of such rents and profits, beyond the sum that may be necessary for the education and support of the persons for whose benefit the trust is created, is liable to the claims of the creditors of such person in the same manner as personal property which cannot be reached by execution.

History: En. Sec. 1315, Civ. C. 1895; re-en. Sec. 4541, Rev. C. 1907; re-en. Sec. 6788, R.C.M. 1921; Cal. Civ. C. Sec. 859; Field Civ. C. Sec. 287; re-en. Sec. 6788, R.C.M. 1935; R.C.M. 1947, 86-106.

72-24-211. When estate of trustee to cease. When the purpose for which an express trust was created ceases, the estate of the trustee also ceases.

History: En. Sec. 1324, Civ. C. 1895; re-en. Sec. 4550, Rev. C. 1907; re-en. Sec. 6797, R.C.M. 1921; Cal. Civ. C. Sec. 871; Field Civ. C. Sec. 299; re-en. Sec. 6797, R.C.M. 1935; R.C.M. 1947, 86-115.

CHAPTER 25

UNIFORM PRINCIPAL AND INCOME ACT

Part 1 — General Provisions

Section
72-25-101. Short title.
72-25-102. Definitions.
72-25-103. Applicability.
72-25-104. Chapter to govern — what and when.
72-25-105. Interpretation — uniformity.

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72-25-201. Receipts constituting income or principal generally — disposition or retention.
72-25-202. Death of tenant between payment dates — apportionment.
72-25-203. Corporate dividends — subscription rights — liquidation — merger.
72-25-204. Bonds or obligations as principal — valuation — loss or gain on sale.
72-25-205. Operation of business.
72-25-206. Animals constituting principal — offspring.
72-25-207. Natural resources — proceeds from severance.
72-25-208. Property subject to depletion as principal.
72-25-209. Unprofitable principal — change in form of investment — delayed income.

Part 3 — Allocation of Expenses

72-25-301. Expenses when trust created.
72-25-302. Expenses when no trust created — improvements.

Part 1

General Provisions

72-25-101. Short title. This chapter may be cited as the "Uniform Principal and Income Act".

History: En. Sec. 15, Ch. 277, L. 1959; R.C.M. 1947, 67-1915.

72-25-102. Definitions. In this chapter, the following definitions apply:

(1) "Principal" means any realty or personalty which has been so set aside or limited by the owner thereof or person thereto legally empowered that it and any substitutions for it are eventually to be conveyed, delivered, or paid to a person, while the return therefrom or use thereof or any part

of such return or use is in the meantime to be taken or received by or held for accumulation for the same or another person.

(2) "Income" means the return derived from principal.

(3) "Tenant" means the person to whom income is presently or currently payable or for whom it is accumulated or who is entitled to the beneficial use of the principal presently and for a time prior to its distribution.

(4) "Remainderman" means the person ultimately entitled to the principal, whether named or designated by the terms of the transaction by which the principal was established or determined by operation of law.

(5) "Trustee" includes the original trustee of any trust to which the principal may be subject and also any succeeding or added trustee.

History: **En. Sec. 1, Ch. 277, L. 1959; R.C.M. 1947, 67-1901.**

72-25-103. Applicability. This chapter shall apply to all estates of tenants or remaindermen which become legally effective after March 17, 1959.

History: **En. Sec. 17, Ch. 277, L. 1959; R.C.M. 1947, 67-1916(part).**

72-25-104. Chapter to govern — what and when. This chapter shall govern the ascertainment of income and principal and the apportionment of receipts and expenses between tenants and remaindermen in all cases where a principal has been established with or, unless otherwise stated hereinafter, without the interposition of a trust; except that in the establishment of the principal, provision may be made touching all matters covered by this chapter, and the person establishing the principal may himself direct the manner of ascertainment of income and principal and the apportionment of receipts and expenses or grant discretion to the trustee or other person to do so, and such provision and direction where not otherwise contrary to law shall control notwithstanding this chapter.

History: **En. Sec. 2, Ch. 277, L. 1959; R.C.M. 1947, 67-1902.**

72-25-105. Interpretation — uniformity. This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

History: **En. Sec. 14, Ch. 277, L. 1959; R.C.M. 1947, 67-1914.**

Part 2

Ascertainment of Principal and Income Allocation of Receipts

72-25-201. Receipts constituting income or principal generally — disposition or retention. (1) All receipts of money or other property paid or delivered as rent of realty or hire of personalty or dividends on corporate shares payable other than in shares of the corporation itself or interest on money loaned or interest on or the rental or use value of property wrongfully withheld or tortiously damaged or otherwise in return for the use of principal shall be deemed income unless otherwise expressly provided in this chapter.

(2) All receipts of money or other property paid or delivered as the consideration for the sale or other transfer, not a leasing or letting, of property

forming a part of the principal or as a repayment of loans or in liquidation of the assets of a corporation or as the proceeds of property taken on eminent domain proceedings where separate awards to tenant and remainderman are not made or as proceeds of insurance upon property forming a part of the principal, except where such insurance has been issued for the benefit of either tenant or remainderman alone, or otherwise as a refund or replacement or change in form of principal shall be deemed principal unless otherwise expressly provided in this chapter. Any profit or loss resulting upon any change in form of principal shall inure to or fall upon principal.

(3) All income after payment of expenses properly chargeable to it shall be paid and delivered to the tenant or retained by him, if already in his possession, or held for accumulation where legally so directed by the terms of the transaction by which the principal was established; while the principal shall be held for ultimate distribution as determined by the terms of the transaction by which it was established or by law.

History: En. Sec. 3, Ch. 277, L. 1959; R.C.M. 1947, 67-1903.

72-25-202. Death of tenant between payment dates — apportionment. (1) Whenever a tenant shall have the right to income from periodic payments, which shall include rent, interest on loans, and annuities but shall not include dividends on corporate shares, and such right shall cease and determine by death or in any other manner at a time other than the date when such periodic payments should be paid, he or his personal representative shall be entitled to that portion of any such income next payable which amounts to the same percentage thereof as the time elapsed from the last due date of such periodic payments to and including the day of the determination of his right is of the total period during which such income would normally accrue. The remaining income shall be paid to the person next entitled to income by the terms of the transaction by which the principal was established. But no action shall be brought by the trustee or tenant to recover such apportioned income or any portion thereof until after the day on which it would have become due to the tenant but for the determination of the right of the tenant entitled thereto.

(2) The provisions of this section shall apply whether an ultimate remainderman is specifically named or not. Likewise when the right of the first tenant accrues at a time other than the payment dates of such periodic payments, he shall only receive that portion of such income which amounts to the same percentage thereof as the time during which he has been so entitled is of the total period during which such income would normally accrue; the balance shall be a part of the principal.

History: En. Sec. 4, Ch. 277, L. 1959; R.C.M. 1947, 67-1904.

72-25-203. Corporate dividends — subscription rights — liquidation — merger. (1) All dividends on shares of a corporation forming a part of the principal which are payable in the shares of the corporation shall be deemed principal. Subject to the provisions of this section, all dividends payable otherwise than in the shares of the corporation itself, including ordinary and extraordinary dividends and dividends payable in shares or other securities or obligations of corporations other than the declaring corporation, shall be deemed income. Where the trustee shall have the option of receiving a dividend either in cash or in the shares of the declaring corporation, it shall be considered as a cash dividend and deemed income, irrespective of the choice made by the trustee.

(2) All rights to subscribe to the shares or other securities or obligations of a corporation accruing on account of the ownership of shares or other securities in such corporation and the proceeds of any sale of such rights shall be deemed principal. All rights to subscribe to the shares or other securities or obligations of a corporation accruing on account of the ownership of shares or other securities in another corporation and the proceeds of any sale of such rights shall be deemed income.

(3) Where the assets of a corporation are liquidated, amounts paid upon corporate shares as cash dividends declared before such liquidation occurred or as arrears of preferred or guaranteed dividends shall be deemed income; all other amounts paid upon corporate shares on disbursement of the corporate assets to the stockholders shall be deemed principal. All disbursements of corporate assets to the stockholders, whenever made, which are designated by the corporation as a return of capital or division of corporate property shall be deemed principal.

(4) Where a corporation succeeds another by merger, consolidation, or reorganization or otherwise acquires its assets and the corporate shares of the succeeding corporation are issued to the shareholders of the original corporation in like proportion to or in substitution for their shares of the original corporation, the two corporations shall be considered a single corporation in applying the provisions of this section. But two corporations shall not be considered a single corporation under this section merely because one owns corporate shares of or otherwise controls or directs the other.

(5) In applying this section the date when a dividend accrues to the person who is entitled to it shall be held to be the date specified by the corporation as the one on which the stockholders entitled thereto are determined or, in default thereof, the date of declaration of the dividend.

History: **En. Sec. 5, Ch. 277, L. 1959; R.C.M. 1947, 67-1905.**

72-25-204. Bonds or obligations as principal — valuation — loss or gain on sale. Where any part of the principal consists of bonds or other obligations for the payment of money, they shall be deemed principal at their inventory value or in default thereof at their market value at the time the principal was established or at their cost where purchased later, regardless of their par or maturity value; and upon their respective maturities or upon their sale, any loss or gain realized thereon shall fall upon or inure to the principal.

History: **En. Sec. 6, Ch. 277, L. 1959; R.C.M. 1947, 67-1906.**

72-25-205. Operation of business. (1) Whenever a trustee or a tenant is authorized by the terms of the transaction by which the principal was established or by law to use any part of the principal in the continuance of a business which the original owner of the property comprising the principal had been carrying on, the net profits of such business attributable to such principal shall be deemed income.

(2) Where such business consists of buying and selling property, the net profits for any period shall be ascertained by deducting from the gross

returns during and the inventory value of the property at the end of such period the expenses during and the inventory value of the property at the beginning of such period.

(3) Where such business does not consist of buying and selling property, the net income shall be computed in accordance with the customary practice of such business but not in such way as to decrease the principal.

(4) Any increase in the value of the principal used in such business shall be deemed principal, and all losses in any one calendar year, after the income from such business for that year has been exhausted, shall fall upon principal.

History: **En. Sec. 7, Ch. 277, L. 1959; R.C.M. 1947, 67-1907.**

72-25-206. Animals constituting principal — offspring. Where any part of the principal consists of animals employed in business, the provisions of 72-25-205 shall apply. In other cases where the animals are held as a part of the principal partly or wholly because of the offspring or increase which they are expected to produce, all offspring or increase shall be deemed principal to the extent necessary to maintain the original number of such animals and the remainder shall be deemed income; and in all other cases such offspring or increase shall be deemed income.

History: **En. Sec. 8, Ch. 277, L. 1959; R.C.M. 1947, 67-1908.**

72-25-207. Natural resources — proceeds from severance. (1) Where any part of the principal consists of property in lands from which may be taken timber, minerals, oils, gas, or other natural resources and the trustee or tenant is authorized by law or by the terms of the transaction by which the principal was established to sell, lease, or otherwise develop such natural resources and no provision is made for the disposition of the net proceeds thereof after the payment of expenses and carrying charges on such property, such proceeds, if received as rent on a lease, shall be deemed income, but if received as consideration, whether as royalties or otherwise, for the permanent severance of such natural resources from the lands, shall be deemed principal to be invested to produce income.

(2) Nothing in this section shall be construed to abrogate or extend any right which may otherwise have accrued by law to a tenant to develop or work such natural resources for his own benefit.

History: **En. Sec. 9, Ch. 277, L. 1959; R.C.M. 1947, 67-1909.**

72-25-208. Property subject to depletion as principal. Where any part of the principal consists of property subject to depletion, such as leaseholds, patents, copyrights, and royalty rights, and the trustee or tenant in possession is not under a duty to change the form of the investment of the principal, the full amount of rents, royalties, or return from the property shall be income to the tenant; but where the trustee or tenant is under a duty, arising either by law or by the terms of the transaction by which the principal was established, to change the form of the investment, either at once or as soon as it may be done without loss, then the return from such property not in excess of 5% per annum of its fair inventory value or in default thereof its market value at the time the principal was established or at its cost where purchased later shall be deemed income and the remainder principal.

History: **En. Sec. 10, Ch. 277, L. 1959; R.C.M. 1947, 67-1910.**

72-25-209. Unprofitable principal — change in form of investment — delayed income. (1) Where any part of a principal in the possession of a trustee consists of realty or personalty which for more than a year and until disposed of as hereinafter stated has not produced an average net income of at least 1% per annum of its fair inventory value or in default thereof its market value at the time the principal was established or of its cost where purchased later and the trustee is under a duty to change the form of the investment as soon as it may be done without sacrifice of value and such change is delayed but is made before the principal is finally distributed, then the tenant, or in case of his death his personal representative, shall be entitled to share in the net proceeds received from the property as delayed income to the extent hereinafter stated.

(2) Such income shall be the difference between the net proceeds received from the property and the amount which, had it been placed at simple interest at the rate of 5% per annum for the period during which the change was delayed, would have produced the net proceeds at the time of change, but in no event shall such income be more than the amount by which the net proceeds exceed the fair inventory value of the property or in default thereof its market value at the time the principal was established or its cost where purchased later. The net proceeds shall consist of the gross proceeds received from the property less any expenses incurred in disposing of it and less all carrying charges which have been paid out of principal during the period while it has been unproductive.

(3) The change shall be taken to have been delayed from the time when the duty to make it first arose, which shall be presumed, in the absence of evidence to the contrary, to be 1 year after the trustee first received the property if then unproductive, otherwise 1 year after it became unproductive.

(4) If the tenant has received any income from the property or has had any beneficial use thereof during the period while the change has been delayed, his share of the delayed income shall be reduced by the amount of such income received or the value of the use had.

(5) In the case of successive tenants, the delayed income shall be divided among them or their representatives according to the length of the period for which each was entitled to income.

History: **En. Sec. 11, Ch. 277, L. 1959; R.C.M. 1947, 67-1911.**

Part 3

Allocation of Expenses

72-25-301. Expenses when trust created. (1) All ordinary expenses incurred in connection with the trust estate or with its administration and management, including regularly recurring taxes assessed against any portion of the principal, water rates, premiums on insurance taken upon the estates of both tenant and remainderman, interest on mortgages on the principal, ordinary repairs, trustees' compensation annually computed on principal, compensation of assistants, and court costs and attorneys' and other fees on regular accountings, shall be paid out of income; but such expenses where incurred in disposing of or as carrying charges on unproductive estate as defined in 72-25-209 shall be paid out of principal, subject to the provisions of subsection (2) of 72-25-209.

(2) All other expenses, including trustees' final termination commissions computed upon principal, cost of investing or reinvesting principal, attorneys' fees and other costs incurred in maintaining or defending any action to protect the trust or the property or assure the title thereof, unless due to the fault or cause of the tenant, and costs of or assessments for improvements to property forming part of the principal, shall be paid out of principal. Any tax levied by any authority, federal, state, or foreign, upon profit or gain defined as principal under the terms of subsection (2) of 72-25-201 shall be paid out of principal, notwithstanding said tax may be denominated a tax upon income by the taxing authority.

(3) Expenses paid out of income according to subsection (1) which represent regularly recurring charges shall be considered to have accrued from day to day and shall be apportioned on that basis whenever the right of the tenant begins or ends at some date other than the payment date of the expenses. Where the expenses to be paid out of income are of unusual amount, the trustee may distribute them throughout an entire year or part thereof or throughout a series of years. After such distribution, where the right of the tenant ends during the period, the expenses shall be apportioned between tenant and remainderman on the basis of such distribution.

(4) Where the costs of or special taxes or assessments for an improvement representing an addition of value to property held by the trustee as part of principal are paid out of principal as provided in subsection (2), the trustee shall reserve out of income and add to the principal each year a sum equal to the cost of the improvement divided by the number of years of the reasonably expected duration of the improvement.

History: **En. Sec. 12, Ch. 277, L. 1959; amd. Sec. 1, Ch. 134, L. 1965; R.C.M. 1947, 67-1912.**

72-25-302. Expenses when no trust created — improvements. (1) The provisions of 72-25-301, so far as applicable and excepting those dealing with costs of or special taxes or assessments for improvements to property, shall govern the apportionment of expenses between tenants and remaindermen where no trust has been created, subject, however, to any legal agreement of the parties or any specific direction of the taxing or other statutes; but where either tenant or remainderman has incurred an expense for the benefit of his own estate and without the consent or agreement of the other, he shall pay such expense in full.

(2) Subject to the exceptions stated in subsection (1), the cost of or special taxes or assessments for an improvement representing an addition of value to property forming part of the principal shall be paid by the tenant, where such improvement cannot reasonably be expected to outlast the estate of the tenant. In all other cases a portion thereof only shall be paid by the tenant, while the remainder shall be paid by the remainderman. Such portion shall be ascertained by taking that percentage of the total which is found by dividing the present value of the tenant's estate by the present value of an

estate of the same form as that of the tenant except that it is limited for a period corresponding to the reasonably expected duration of the improvement. The computation of present values of the estates shall be made on the expectancy basis set forth in the American experience tables of mortality, and no other evidence of duration or expectancy shall be considered.

History: **En. Sec. 13, Ch. 277, L. 1959; R.C.M. 1947, 67-1913.**

CHAPTER 26

UNIFORM GIFTS TO MINORS ACT

Part 1 — General Provisions

Section

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72-26-401. Who eligible to be successor.
72-26-402. Designation of successor by custodian or minor.
72-26-403. Rights and duties of successor.
72-26-404. Removal or bonding of custodian for cause.

Part 1

General Provisions

72-26-101. Short title. This chapter may be cited as the "Revised Montana Uniform Gifts to Minors Act".

History: **En. Sec. 10, Ch. 245, L. 1957; amd. Sec. 7, Ch. 234, L. 1967; R.C.M. 1947, 67-1810.**

72-26-102. Definitions. In this chapter, unless the context otherwise requires, the following definitions apply:

(1) An "adult" is a person who has attained the age of 18 years.

(2) A "bank" is a bank, trust company, national banking association, savings bank, or industrial bank.

(3) A "broker" is a person lawfully engaged in the business of effecting transactions in securities for the account of others. The term includes a bank which effects such transactions. The term also includes a person lawfully engaged in buying and selling securities for his own account, through a broker or otherwise, as a part of a regular business.

(4) "Court" means the district court of general jurisdiction in the state of Montana.

(5) The "custodial property" includes:

(a) all securities, life insurance policies, annuity contracts, and money under the supervision of the same custodian for the same minor as a consequence of a gift or gifts made to the minor in a manner prescribed in this chapter;

(b) the income from the custodial property; and

(c) the proceeds, immediate and remote, from the sale, exchange, conversion, investment, reinvestment, surrender, or other disposition of such securities, money, life insurance policies, annuity contracts, and income.

(6) A "custodian" is a person so designated in a manner prescribed in this chapter. The term includes a successor custodian.

(7) A "financial institution" is a bank, a federal savings and loan association, a savings institution chartered and supervised as a savings and loan or similar institution under federal laws or the laws of a state, or a federal credit union or a credit union chartered and supervised under the laws of a state. A "domestic financial institution" is one chartered and supervised under the laws of this state or chartered and supervised under federal law and having its principal office in this state. An "insured financial institution" is one, deposits (including a savings, share, certificate, or deposit account) in which are, in whole or in part, insured by the federal deposit insurance corporation, by the federal savings and loan insurance corporation, or by a deposit insurance fund approved by this state.

(8) A "guardian" of a minor means the general guardian, guardian, tutor, or curator of his property or estate appointed or qualified by a court of this state or another state.

(9) An "issuer" is a person who places or authorizes the placing of his name on a security (other than as a transfer agent) to evidence that it represents a share, participation, or other interest in his property or in an enterprise or to evidence his duty or undertaking to perform an obligation evidenced by the security or who becomes responsible for or in place of any such person.

(10) A "legal representative" of a person is his executor or the administrator, general guardian, guardian, committee, conservator, tutor, or curator of his property or estate.

(11) A "life insurance policy or annuity contract" means a life insurance policy or annuity contract issued by an insurance company authorized to do business in this state on the life of a minor to whom a gift of the policy or contract is made in the manner prescribed in this chapter or on the life of a member of the minor's family.

(12) A "member" of a "minor's family" means any of the minor's parents, grandparents, brothers, sisters, uncles, and aunts, whether of the whole blood or the half blood or by or through legal adoption.

(13) A "minor" is a person who has not attained the age of 18 years.

(14) A "security" includes any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such title or lease, collateral trust certificate, transferable share, voting trust certificate, or in general any interest or instrument commonly known as a security or any certificate of interest or participation in any temporary or interim certificate, receipt, or certificate of deposit for or any warrant or right to subscribe to or purchase any of the foregoing. The term does not include a security of which the donor is the issuer. A security is in "registered form" when it specifies a person entitled to it or to the rights it evidences and its transfer may be registered upon books maintained for that purpose by or on behalf of the issuer.

(15) A "transfer agent" is a person who acts as authenticating trustee, transfer agent, registrar, or other agent for an issuer in the registration of transfers of its securities or in the issue of new securities or in the cancellation of surrendered securities.

(16) A "trust company" is a bank or corporation authorized to exercise trust powers in the state of Montana.

History: **En. Sec. 1, Ch. 245, L. 1957; amd. Sec. 1, Ch. 234, L. 1967; amd. Sec. 11, Ch. 423, L. 1971; R.C.M. 1947, 67-1801.**

72-26-103. Construction — uniformity — not exclusive. (1) This chapter shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

(2) This chapter shall not be construed as providing an exclusive method for making gifts to minors.

History: **En. Sec. 9, Ch. 245, L. 1957; R.C.M. 1947, 67-1809.**

72-26-104. Vested rights not to be impaired. (1) Nothing in this chapter shall be construed to impair constitutionally vested rights.

(2) The provisions of this chapter as amended by section 8, Chapter 234, Laws of 1967, shall be construed as a continuation of this chapter according to the language employed and not as a new enactment. That amendment of this chapter does not affect gifts made in a manner prescribed therein or the powers, duties, or immunities conferred by gifts in such manner upon custodians and persons dealing with custodians. The provisions of this chapter as so amended apply after July 1, 1967, however, to all gifts made in a manner and form prescribed in this chapter, except insofar as such application impairs constitutionally vested rights.

History: **En. Sec. 12, Ch. 245, L. 1957; amd. Sec. 8, Ch. 234, L. 1967; R.C.M. 1947, 67-1811.**

Part 2

Making and Effect of Gift

72-26-201. Manner of making gift. (1) An adult person may, during his lifetime, make a gift of a security, money, a life insurance policy, or an annuity contract to a person who is a minor on the date of the gift:

(a) if the subject of the gift is a security in registered form, by registering it in the name of the donor, another adult person, or a trust company, followed in substance by the words "as custodian for ... (name of minor) under the Montana Uniform Gifts to Minors Act";

(b) if the subject of the gift is a security not in registered form, by delivering it to an adult person other than the donor or a trust company, accompanied by a statement of gift in the following form, in substance, signed by the donor and the person designated as custodian:

GIFT UNDER THE MONTANA UNIFORM GIFTS TO MINORS ACT

I, ... (name of donor), hereby deliver to .... (name of custodian) as custodian for .... (name of minor) under the Montana Uniform Gifts to Minors Act, the following security(ies):

(insert an appropriate description of the security or securities delivered sufficient to identify it or them)

....
(signature of donor)

.... (name of custodian) hereby acknowledges receipt of the above-described security(ies) as custodian for the above minor under the Montana Uniform Gifts to Minors Act.

Dated: ....

....
(signature of custodian);

(c) if the subject of the gift is money, by paying or delivering it to a broker or a domestic financial institution for credit to an account in the name of the donor, another adult, or a trust company, followed in substance by the words "as custodian for .... (name of minor) under the Montana Uniform Gifts to Minors Act";

(d) if the subject of the gift is a life insurance policy or annuity contract, by causing the ownership of the policy or contract to be registered with the issuing insurance company in the name of the donor, another adult, or a trust company, followed in substance by the words "as custodian for .... (name of minor) under the Montana Uniform Gifts to Minors Act".

(2) Any gift made in a manner prescribed in subsection (1) may be made to only one minor, and only one person may be the custodian.

(3) A donor who makes a gift to a minor in a manner prescribed in subsection (1) shall promptly do all things within his power to put the subject of the gift in the possession and control of the custodian, but neither the donor's failure to comply with this subsection nor his designation of an ineligible person as custodian nor renunciation by the person designated as custodian affects the consummation of the gift.

History: En. Sec. 2, Ch. 245, L. 1957; amd. Sec. 2, Ch. 234, L. 1967; R.C.M. 1947, 67-1802; amd. Sec. 32, Ch. 6, L. 1979; amd. Sec. 1, Ch. 8, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "(an adult member of the minor's family, a guardian of the minor)" from (1)(a), (b), (c), and (d).

72-26-202. Effect of gift. (1) A gift made in a manner prescribed in this chapter is irrevocable and conveys to the minor indefeasibly vested legal title to the security, life insurance policy, annuity contract, or money given, but no guardian of the minor has any right, power, duty, or authority with respect to the custodial property except as provided in this chapter.

(2) By making a gift in a manner prescribed in this chapter, the donor incorporates in his gift all the provisions of this chapter and grants to the custodian and to any issuer, transfer agent, bank, financial institution, life insurance company, broker, or third person dealing with a person designated as custodian the respective powers, rights, and immunities provided in this chapter.

History: **En. Sec. 3, Ch. 245, L. 1957; amd. Sec. 3, Ch. 234, L. 1967; R.C.M. 1947, 67-1803.**

Part 3

Gift Administration — Custodian

72-26-301. Bond not required. Except as otherwise provided in this chapter, a custodian shall not be required to give a bond for the performance of his duties.

History: **En. Sec. 5, Ch. 245, L. 1957; R.C.M. 1947, 67-1805(d).**

72-26-302. Duties and powers of custodian. (1) The custodian shall collect, hold, manage, invest, and reinvest the custodial property.

(2) The custodian shall pay over to the minor for expenditure by him or expend for the minor's benefit so much of or all the custodial property as the custodian deems advisable for the support, maintenance, education, and benefit of the minor in the manner, at the time or times, and to the extent that the custodian in his discretion deems suitable and proper, with or without court order, with or without regard to the duty of himself or of any other person to support the minor or his ability to do so, and with or without regard to any other income or property of the minor which may be applicable or available for any such purpose.

(3) The court, on the petition of a parent or guardian of the minor or of the minor, if he has attained the age of 14 years, may order the custodian to pay over to the minor for expenditure by him or to expend so much of or all the custodial property as is necessary for the minor's support, maintenance, or education.

(4) To the extent that the custodial property is not so expended, the custodian shall deliver or pay it over to the minor on his attaining the age of 18 years, or if the minor dies before attaining the age of 18 years, he shall thereupon deliver or pay it over to the estate of the minor.

(5) The custodian, notwithstanding statutes restricting investment by fiduciaries, shall invest and reinvest the custodial property as would a prudent man of discretion and intelligence who is seeking a reasonable income and the preservation of his capital, except that he may, in his discretion and without liability to the minor or his estate, retain a security given to the minor in a manner prescribed in this chapter or hold money so given in an account in the financial institution to which it was paid or delivered by the donor.

(6) The custodian may sell, exchange, convert, surrender, or otherwise dispose of custodial property in the manner, at the time or times, for the price or prices, and upon the terms he deems advisable. He may vote, in

person or by general or limited proxy, a security which is custodial property. He may consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of an issuer, a security of which is custodial property, and to the sale, lease, pledge, or mortgage of any property by or to such an issuer and to any other action by such an issuer. He may execute and deliver any and all instruments in writing which he deems advisable to carry out any of his powers as custodian.

(7) The custodian shall register each security which is custodial property and in registered form in the name of the custodian, followed in substance by the words: "as custodian for .... (name of minor) under the Montana Uniform Gifts to Minors Act". The custodian shall hold all money which is custodial property in an account with a broker or in an insured domestic financial institution in the name of the custodian, followed in substance by the words: "as custodian for .... (name of minor) under the Montana Uniform Gifts to Minors Act". The custodian shall keep all other custodial property separate and distinct from his own property in a manner to identify it clearly as custodial property.

(8) The custodian shall keep records of all transactions with respect to the custodial property and make them available for inspection at reasonable intervals by a parent or legal representative of the minor or by the minor, if he has attained the age of 14 years.

(9) A custodian has (and holds as powers in trust) with respect to the custodial property, in addition to the rights and powers provided in this chapter, all the rights and powers which a guardian has with respect to property not held as custodial property.

(10) If the subject of the gift is a life insurance policy or annuity contract, the custodian:

(a) in his capacity as custodian, has all the incidents of ownership in the policy or contract to the same extent as if he were the owner, except that the designated beneficiary of any policy or contract on the life of the minor shall be the minor's estate and the designated beneficiary of any policy or contract on the life of a person other than the minor shall be the custodian as custodian for the minor for whom he is acting; and

(b) may pay premiums on the policy or contract out of the custodial property.

History: En. Sec. 4, Ch. 245, L. 1957; amd. Sec. 4, Ch. 234, L. 1967; amd. Sec. 12, Ch. 423, L. 1971; R.C.M. 1947, 67-1804.

72-26-303. Exemption of third persons from liability. (1) No issuer, transfer agent, bank, life insurance company, broker, or other person or financial institution acting on the instructions of or otherwise dealing with any person purporting to act as a donor or in the capacity of a custodian is responsible for determining whether the person designated as custodian by the purported donor or by the custodian or purporting to act as a custodian has been duly designated or whether any purchase, sale, or transfer to or by or any other act of any person purporting to act in the capacity of custodian is in accordance with or authorized by this chapter or is obliged to inquire into the validity or propriety under this chapter of any instrument or instructions executed or given by a person purporting to act as a donor or in the capacity of a custodian or is bound to see to the application by any person purporting to act in the capacity of custodian of any money or other property paid or delivered to him.

(2) No issuer, transfer agent, bank, life insurance company, broker, or other person or financial institution acting on any instrument of designation of a successor custodian, executed as provided in 72-26-402 by a minor to whom a gift has been made in a manner prescribed in this chapter and who has attained the age of 14 years, is responsible for determining whether the person designated by the minor as successor custodian has been duly designated or is obliged to inquire into the validity or propriety under this chapter of the instrument of designation.

History: **En. Sec. 6, Ch. 245, L. 1957; amd. Sec. 5, Ch. 234, L. 1967; R.C.M. 1947, 67-1806.**

72-26-304. Custodian's expenses and compensation. (1) A custodian is entitled to reimbursement from the custodial property for his reasonable expenses incurred in the performance of his duties.

(2) A custodian may act without compensation for his services.

(3) Unless he is a donor, a custodian may receive from the custodial property reasonable compensation for his services determined by one of the following standards in the order stated:

(a) a direction by the donor when the gift is made;

(b) a statute of this state applicable to custodians;

(c) the statute of this state applicable to guardians;

(d) an order of the court.

History: **En. Sec. 5, Ch. 245, L. 1957; R.C.M. 1947, 67-1805(a) thru (c).**

72-26-305. Limited liability of uncompensated custodian. A custodian not compensated for his services is not liable for losses to the custodial property unless they result from his bad faith, intentional wrongdoing, or gross negligence or from his failure to maintain the standard of prudence in investing the custodial property provided in this chapter.

History: **En. Sec. 5, Ch. 245, L. 1957; R.C.M. 1947, 67-1805(e).**

72-26-306. Accounting by custodian. (1) The minor, if he has attained the age of 14 years, or the legal representative of the minor, an adult member of the minor's family, or a donor or his legal representative may petition the court for an accounting by the custodian or his legal representative.

(2) The court, in a proceeding under this chapter or otherwise, may require or permit the custodian or his legal representative to account and, if the custodian is removed, shall so require and order delivery of all custodial property to the successor custodian and the execution of all instruments required for the transfer thereof.

History: **En. Sec. 8, Ch. 245, L. 1957; R.C.M. 1947, 67-1808.**

Part 4

Resignation, Death, or Removal of Custodian — Bonding — Successor

72-26-401. Who eligible to be successor. Only an adult member of the minor's family, a guardian of the minor, or a trust company is eligible to become a successor custodian.

History: **En. Sec. 7, Ch. 245, L. 1957; amd. Sec. 6, Ch. 234, L. 1967; amd. Sec. 13, Ch. 423, L. 1971; R.C.M. 1947, 67-1807(part).**

72-26-402. Designation of successor by custodian or minor. (1) A custodian may designate his successor by executing and dating an instrument of designation before a subscribing witness other than the successor; the instrument of designation may but need not contain the resignation of the custodian. If the custodian does not so designate his successor before he dies or becomes legally incapacitated and the minor has attained the age of 14 years, the minor may designate a successor custodian by executing an instrument of designation before a subscribing witness other than the successor.

(2) The designation of a successor custodian as provided in subsection (1) takes effect as to each item of the custodial property when the custodian resigns, dies, or becomes legally incapacitated and the custodian or his legal representative:

(a) causes the item, if it is a security which is custodial property and in registered form or a life insurance policy or annuity contract, to be registered, with the issuing insurance company in the case of a life insurance policy or annuity contract, in the name of the successor custodian, followed in substance by the words "as custodian for .... (name of minor) under the Montana Uniform Gifts to Minors Act"; and

(b) delivers or causes to be delivered to the successor custodian any other item of the custodial property, together with the instrument of designation of the successor custodian or a true copy thereof and any additional instruments required for the transfer thereof to the successor custodian.

(3) A custodian who executes an instrument of designation of his successor containing the custodian's resignation as provided in subsection (1) shall promptly do all things within his power to put each item of the custodial property in the possession and control of the successor custodian named in the instrument. The legal representative of a custodian who dies or becomes legally incapacitated shall promptly do all things within his power to put each item of the custodial property in the possession and control of the successor custodian named in an instrument of designation executed as provided in subsection (1) by the custodian or, if none, by the minor if he has no guardian and has attained the age of 14 years or in the possession and control of the guardian of the minor if he has a guardian. If the custodian has executed as provided in subsection (1) more than one instrument of designation, his legal representative shall treat the instrument dated on an earlier date as having been revoked by the instrument dated on a later date.

(4) If a person designated as custodian or as successor custodian by the custodian as provided in subsection (1) is not eligible, dies, or becomes legally incapacitated before the minor attains the age of 18 years and if the minor has a guardian, the guardian of the minor shall be successor custodian. If the minor has no guardian and if no successor custodian who is eligible and has not died or become legally incapacitated has been designated as provided in subsection (1), a donor or his legal representative, the legal representative of the custodian, or an adult member of the minor's family may petition the court for the designation of a successor custodian.

History: En. Sec. 7, Ch. 245, L. 1957; amd. Sec. 6, Ch. 234, L. 1967; amd. Sec. 13, Ch. 423, L. 1971; R.C.M. 1947, 67-1807(part); amd. Sec. 33, Ch. 6, L. 1979.

72-26-403. Rights and duties of successor. A successor custodian has all the rights, powers, duties, and immunities of a custodian designated in a manner prescribed by this chapter.

History: En. Sec. 7, Ch. 245, L. 1957; amd. Sec. 6, Ch. 234, L. 1967; amd. Sec. 13, Ch. 423, L. 1971; R.C.M. 1947, 67-1807(part).

72-26-404. Removal or bonding of custodian for cause. (1) A donor, the legal representative of a donor, a successor custodian, an adult member of the minor's family, a guardian of the minor, or the minor, if he has attained the age of 14 years, may petition the court that for cause shown in the petition the custodian be removed and a successor custodian be designated or, in the alternative, that the custodian be required to give bond for the performance of his duties.

(2) Upon the filing of a petition as provided in this section, the district court shall grant an order, directed to the persons and returnable on such notice as the court may require, to show cause why the relief prayed for in the petition should not be granted and, in due course, grant such relief as the court finds to be in the best interests of the minor.

History: En. Sec. 7, Ch. 245, L. 1957; amd. Sec. 6, Ch. 234, L. 1967; amd. Sec. 13, Ch. 423, L. 1971; R.C.M. 1947, 67-1807(e), (f).

CHAPTER 27

MISCELLANEOUS PROVISIONS RELATING TO TRUSTS

Part 1 — Charitable Trusts in Relation to Federal Tax Laws

Section
72-27-101. Special duties and restrictions on certain trustees.
72-27-102. Amendment of trust instrument by certain trustees.

Part 2 — Prearranged Funeral Plans and Related Services—Mandatory Trust

72-27-201. Contract for prearranged funeral plan or related services — trust required — interest — exception.
72-27-202. Deposit of money — trust fund.
72-27-203. Report of institution holding deposited money.
72-27-204. Penalty.

Part 1

Charitable Trusts in Relation to Federal Tax Laws

72-27-101. Special duties and restrictions on certain trustees. Notwithstanding any provision to the contrary in the governing instrument or under any other law of this state and except as otherwise provided by court decree entered after March 28, 1974, the trustee of a trust, whenever created, which is or is treated as a private foundation or a split-interest trust as defined in sections 509 and 4947, respectively, of the Internal Revenue Code of 1954, as in effect on March 28, 1974, during the period it is or is treated as a private foundation or split-interest trust as so defined:

(1) shall not engage in any act of self-dealing as defined in section 4941(d) thereof;

(2) shall distribute the trust income for each taxable year at such time and in such manner as not to subject the trust to the tax on undistributed income imposed by section 4942 thereof;

(3) shall not, if section 4943 thereof is applicable, retain any excess business holdings as defined in subsection (c) of that section;

(4) shall not, if section 4944 thereof is applicable, make any investment in such manner as to subject the trust to tax under that section; and

(5) shall not make any taxable expenditure as defined in section 4945(d) thereof.

History: **En. 86-707 by Sec. 1, Ch. 332, L. 1974; R.C.M. 1947, 86-707(1).**

72-27-102. Amendment of trust instrument by certain trustees. (1) The trustee of a trust, whenever created, which is or is treated as a private foundation or a split-interest trust as defined in sections 509 and 4947, respectively, of the Internal Revenue Code of 1954, as in effect on March 28, 1974, may amend the terms of the governing instrument to the extent necessary to bring the trust into conformity with the requirements for:

(a) termination of private foundation status in the manner described in section 507(b) thereof;

(b) exemption of the trust from the taxes imposed by sections 4941 to 4945, inclusive, thereof, including the addition of a power to invade principal to the extent necessary to meet the requirements of section 4942; or

(c) exclusion of the trust from private foundation status under section 509(a)(3) thereof and for this latter purpose may release any power contained in the governing instrument, may reduce or limit the charitable organizations or classes of charitable organizations in whose favor a power to select may be exercised, and may appoint new or additional trustees.

(2) If the trust is for the benefit of one or more named charitable organizations, the trustee shall first obtain the consent of those organizations before making any amendment under subsection (1)(c).

History: **En. 86-707 by Sec. 1, Ch. 332, L. 1974; R.C.M. 1947, 86-707(2).**

Part 2

Prearranged Funeral Plans and Related Services — Mandatory Trust

72-27-201. Contract for prearranged funeral plan or related services — trust required — interest — exception. (1) In all cases when prior to his death a person or someone in his behalf makes a contract for the final disposition of his body under which contract, pursuant to a prearranged funeral plan, personal property will be delivered upon his death or the professional services of a funeral director, embalmer, cemetery firm, or mausoleum-columbarium corporation will then be furnished, all money paid under such contract shall be held in trust for the purpose for which it was paid until the obligation is fulfilled according to its terms or, by mutual consent of both parties to the contract, said money is refunded to the proper party.

(2) Accruals of interest upon this money are subject to this same trust.

(3) Such a trust is not necessary for that part of the contract that involves the sale of a cemetery lot if title is passed at the time the cemetery firm receives payment for the cemetery lot.

History: En. Sec. 1, Ch. 232, L. 1953; amd. Sec. 1, Ch. 454, L. 1977; R.C.M. 1947, 86-701.

72-27-202. Deposit of money — trust fund. (1) Within 30 days after receipt, the party to the contract holding said money in trust according to 72-27-201 shall deposit said money in a banking institution or invest said money in the stock of a savings or building and loan association organized under the laws of the state of Montana or of the United States of America and having its principal place of business in the state, the deposits of which banking institution or the stock liability of which savings or building and loan association are insured by an instrumentality of the federal government.

(2) Said deposits or investments shall be and constitute a trust fund for the benefit of the person who has contracted for such property and services upon his death. Such money shall be deposited in a separate account in the name of the depositor as trustee for the person who has contracted for such property and services upon his death.

History: En. Sec. 2, Ch. 232, L. 1953; R.C.M. 1947, 86-702.

72-27-203. Report of institution holding deposited money. A banking institution or savings or building and loan association receiving money in trust under 72-27-202 shall report to the department of commerce before February 1 of each year all amounts received and held in trust. This report shall show the name and address of each trustee and cestui que trust, the principal amount remaining, and the interest or dividends paid on each such account.

History: En. Sec. 3, Ch. 232, L. 1953; amd. Sec. 144, Ch. 431, L. 1975; R.C.M. 1947, 86-703; amd. Sec. 2, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department of commerce" for "department of business regulation".

72-27-204. Penalty. Any person willfully violating the provisions of 72-27-202 shall be guilty of a misdemeanor and upon conviction therefor shall be punished as provided in 46-18-212.

History: En. Sec. 4, Ch. 232, L. 1953; R.C.M. 1947, 86-704.

CHAPTERS 28 AND 29

RESERVED

CHAPTER 30

MANAGEMENT OF INSTITUTIONAL FUNDS

Part 1 — General Provisions

Section
72-30-101. Short title.
72-30-102. Definitions.
72-30-103. Uniformity of construction.

Part 2 — Management of Funds

72-30-201. Endowment funds subject to appropriation and expenditure — net appreciation.
72-30-202. Determination of historic dollar value by institution conclusive.
72-30-203. Donor's intention restricting expenditure of net appreciation.
72-30-204. Allowable investments — retention of property.
72-30-205. Delegation of investment authority — advisory service.
72-30-206. Standard of care in management.
72-30-207. Release of restrictions in gift instrument.

Part 1

General Provisions

72-30-101. Short title. This chapter may be cited as the "Uniform Management of Institutional Funds Act".

History: **En. Sec. 10, Ch. 389, L. 1973; R.C.M. 1947, 86-809.**

72-30-102. Definitions. In this chapter, the following definitions apply:

(1) "Institution" means an incorporated or unincorporated organization organized and operated exclusively for educational, religious, charitable, or other eleemosynary purposes or a governmental organization to the extent that it holds funds exclusively for any of these purposes.

(2) "Institutional fund" means a fund held by an institution for its exclusive use, benefit, or purposes but does not include:

(a) a fund held for an institution by a trustee that is not an institution; or

(b) a fund in which a beneficiary that is not an institution has an interest, other than possible rights that could arise upon violation or failure of the purposes of the fund.

(3) "Endowment fund" means an institutional fund or any part thereof not wholly expendable by the institution on a current basis under the terms of the applicable gift instrument.

(4) "Governing board" means the body responsible for the management of an institution or of an institutional fund.

(5) "Historic dollar value" means the aggregate fair value in dollars of:

(a) an endowment fund at the time it became an endowment fund;

(b) each subsequent donation to the fund at the time it is made; and

(c) each accumulation made pursuant to a direction in the applicable gift instrument at the time the accumulation is added to the fund.

(6) "Gift instrument" means a will, deed, grant, conveyance, agreement, memorandum, writing, or other governing document (including the terms of any institutional solicitations from which an institutional fund resulted) under which property is transferred to or held by an institution as an institutional fund.

History: **En. Sec. 1, Ch. 389, L. 1973; R.C.M. 1947, 86-801(part).**

72-30-103. Uniformity of construction. This chapter shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among those states which enact it.

History: **En. Sec. 9, Ch. 389, L. 1973; R.C.M. 1947, 86-808.**

Part 2

Management of Funds

72-30-201. Endowment funds subject to appropriation and expenditure — net appreciation. (1) The governing board may appropriate for expenditure for the uses and purposes for which an endowment fund is established so much of the net appreciation, realized and unrealized, in the fair value of the assets of an endowment fund over the historic dollar value of the fund as is prudent under the standard established by 72-30-206.

(2) This section does not limit the authority of the governing board to expend funds as permitted under other law, the terms of the applicable gift instrument, or the charter of the institution.

History: **En. Sec. 2, Ch. 389, L. 1973; R.C.M. 1947, 86-802.**

72-30-202. Determination of historic dollar value by institution conclusive. The determination of historic dollar value made in good faith by the institution is conclusive.

History: **En. Sec. 1, Ch. 389, L. 1973; R.C.M. 1947, 86-801(part).**

72-30-203. Donor's intention restricting expenditure of net appreciation. (1) Section 72-30-201 does not apply if the applicable gift instrument indicates the donor's intention that net appreciation shall not be expended.

(2) A restriction upon the expenditure of net appreciation may not be implied from a designation of a gift as an endowment or from a direction or authorization in the applicable gift instrument to use only "income", "interest", "dividends", or "rents, issues, or profits" or "to preserve the principal intact" or a direction which contains other words of similar import. This rule of construction applies to gift instruments executed or in effect before or after July 1, 1973.

History: **En. Sec. 3, Ch. 389, L. 1973; R.C.M. 1947, 86-803.**

72-30-204. Allowable investments — retention of property. In addition to an investment otherwise authorized by law or by the applicable gift instrument and without restriction to investments a fiduciary may make, the governing board, subject to any specific limitations set forth in the applicable gift instrument or in the applicable law other than law relating to investment by a fiduciary, may:

(1) invest and reinvest an institutional fund in any real or personal property deemed advisable by the governing board, whether or not it produces a current return, including mortgages, stocks, bonds, debentures, and other securities of profit or nonprofit corporations; shares in or obligations of associations, partnerships, or individuals; and obligations of any government or subdivision or instrumentality thereof;

(2) retain property contributed by a donor to an institutional fund for as long as the governing board deems advisable;

(3) include all or part of any institutional fund in any pooled or common fund maintained by the institution; and

(4) invest all or any part of an institutional fund in any other pooled or common fund available for investment, including shares or interests in regulated investment companies, mutual funds, common trust funds, investment partnerships, real estate investment trusts, or similar organizations in which funds are commingled and investment determinations are made by persons other than the governing board.

History: En. Sec. 4, Ch. 389, L. 1973; R.C.M. 1947, 86-804; amd. Sec. 34, Ch. 6, L. 1979.

72-30-205. Delegation of investment authority — advisory service. Except as otherwise provided by the applicable gift instrument or by applicable law relating to governmental institutions or funds, the governing board may:

(1) delegate to its committees, officers, or employees of the institution or the fund or agents, including investment counsel, the authority to act in place of the board in investment and reinvestment of institutional funds;

(2) contract with independent investment advisors, investment counsel or managers, banks, or trust companies so to act; and

(3) authorize the payment of compensation for investment advisory or management services.

History: En. Sec. 5, Ch. 389, L. 1973; R.C.M. 1947, 86-805.

72-30-206. Standard of care in management. In the administration of the powers to appropriate appreciation, to make and retain investments, and to delegate investment management of institutional funds, members of a governing board shall exercise ordinary business care and prudence under the facts and circumstances prevailing at the time of the action or decision. In so doing they shall consider long- and short-term needs of the institution in carrying out its educational, religious, charitable, or other eleemosynary purposes, its present and anticipated financial requirements, expected total return on its investments, price level trends, and general economic conditions.

History: En. Sec. 6, Ch. 389, L. 1973; R.C.M. 1947, 86-806.

72-30-207. Release of restrictions in gift instrument. (1) With the written consent of the donor, the governing board may release, in whole or in part, a restriction imposed by the applicable gift instrument on the use or investment of an institutional fund.

(2) If written consent of the donor cannot be obtained by reason of his death, disability, unavailability, or impossibility of identification, the governing board may apply in the name of the institution to the appropriate court for release of a restriction imposed by the applicable gift instrument on the use or investment of an institutional fund. The attorney general shall be notified of the application and shall be given an opportunity to be heard. If the court finds that the restriction is obsolete, inappropriate, or impracticable, it may by order release the restriction in whole or in part. A release under this subsection may not change an endowment fund to a fund that is not an endowment fund.

(3) A release under this section may not allow a fund to be used for purposes other than the educational, religious, charitable, or other eleemosynary purposes of the institution affected.

(4) This section does not limit the application of the doctrine of cy pres.

History: **En. Sec. 7, Ch. 389, L. 1973; R.C.M. 1947, 86-807.**

CHAPTER 31

MISCELLANEOUS PROVISIONS RELATING TO FIDUCIARIES

Part 1 — General

Section
72-31-101. Oath in behalf of corporation acting as fiduciary.
72-31-102. Investment by fiduciaries in home owners' loan corporation bonds authorized.
72-31-103. Validation of fiduciary sales.

Part 1

General

72-31-101. Oath in behalf of corporation acting as fiduciary. In all matters where a corporation is authorized to act as trustee, guardian, executor, administrator, or in any fiduciary capacity and an oath of office is required, it shall be competent for an officer of such corporation to take the required oath for and on behalf of his corporation, and such corporation shall thereby become amenable to the laws relating to individuals in like matters, so far as such laws may be applied to a corporation.

History: **En. Sec. 1, Ch. 15, L. 1905; re-en. Sec. 7194, Rev. C. 1907; re-en. Sec. 9828, R.C.M. 1921; re-en. Sec. 9828, R.C.M. 1935; R.C.M. 1947, 93-8713.**

72-31-102. Investment by fiduciaries in home owners' loan corporation bonds authorized. Notwithstanding any other provision of law, it shall be lawful for any executor, administrator, guardian or conservator, trustee, or other fiduciary to invest the funds or moneys in his custody or possession, eligible for investment, in bonds of the home owners' loan corporation or debentures issued by the federal housing administrator, guaranteed as to principal and interest by the United States government.

History: En. Sec. 1, Ch. 5, Ex. L. 1933; amd. Sec. 1, Ch. 37, L. 1935; re-en. Sec. 5309.35, R.C.M. 1935; amd. Sec. 1, Ch. 24, L. 1937; R.C.M. 1947, 35-142(part).

72-31-103. Validation of fiduciary sales. All sales, provided no action is pending on July 1, 1973, to set aside such deed or conveyance, by trustees, executors, administrators, and guardians which previous to January 1, 1973, were made to purchasers for a valuable consideration, which consideration has been paid by such purchasers in good faith, and such sales shall not have been set aside by the district or probate court having jurisdiction thereof, shall be sufficient to sustain a trustee's, executor's, administrator's, or guardian's deed or conveyance to such purchaser and, in case such deed or conveyance shall not have been given, shall entitle such purchaser to such deed or conveyance; and such deed or conveyance, if executed on July 1, 1973, or when executed, shall be sufficient to convey to such purchaser all the title that such beneficiary, decedent, or ward had in said real or personal property; and all irregularities in obtaining the order of the court for such sale and all irregularities or defects in making or conducting such sale by said trustee, executor, administrator, or guardian shall be disregarded, and such sale shall not be invalidated by reason of any such defect or irregularity.

History: En. Sec. 1, Ch. 81, L. 1973; R.C.M. 1947, 91-4328.

TITLES 73 AND 74

RESERVED

TITLE 75

ENVIRONMENTAL PROTECTION

Ch.
1. Environmental Policy.
2. Air Quality.
3. Nuclear Regulation.
Chapter 4 reserved.
5. Water Quality.
6. Public Water Supplies, Distribution, and Treatment.
7. Aquatic Ecosystem Protections.
Chapters 8 and 9 reserved.
10. Management of Material Recycling — Litter Control.
Chapters 11 through 14 reserved.
15. Landscape Management.
Chapters 16 through 19 reserved.
20. Major Facility Siting.

CHAPTER 1

ENVIRONMENTAL POLICY

Part 1 — General Provisions

Section
75-1-101. Short title.
75-1-102. Purpose.
75-1-103. Policy.
75-1-104. Specific statutory obligations unimpaired.
75-1-105. Policies and goals supplementary.

Part 2 — Environmental Impact Statements

75-1-201. General directions — environmental impact statements.
75-1-202. Agency rules to prescribe fees.
75-1-203. Fee schedule — maximums.
75-1-204. Application of administrative procedure act.
75-1-205. Use of fees.
75-1-206. Multiple applications or combined facility.
75-1-207. Major facility siting applications excepted.

Part 3 — Environmental Quality Council

75-1-301. Definition of council.
75-1-302. Meetings.
Sections 75-1-303 through 75-1-310 reserved.
75-1-311. Examination of records of government agencies.
75-1-312. Hearings — council subpoena power — contempt proceedings.
75-1-313. Consultation with other groups — utilization of services.
Sections 75-1-314 through 75-1-320 reserved.
75-1-321. Appointment and qualifications of executive director.
75-1-322. Term and removal of executive director.
75-1-323. Appointment of employees.
75-1-324. Duties of executive director and staff.

Part 1

General Provisions

75-1-101. Short title. This chapter may be cited as the "Montana Environmental Policy Act".

History: En. Sec. 1, Ch. 238, L. 1971; R.C.M. 1947, 69-6501.

75-1-102. Purpose. The purpose of this chapter is to declare a state policy which will encourage productive and enjoyable harmony between man and his environment, to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man, to enrich the understanding of the ecological systems and natural resources important to the state, and to establish an environmental quality council.

History: En. Sec. 2, Ch. 238, L. 1971; R.C.M. 1947, 69-6502.

75-1-103. Policy. (1) The legislature, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances, and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the state of Montana, in cooperation with the federal government and local governments and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can coexist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Montanans.

(2) In order to carry out the policy set forth in this chapter, it is the continuing responsibility of the state of Montana to use all practicable means consistent with other essential considerations of state policy to improve and coordinate state plans, functions, programs, and resources to the end that the state may:

(a) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

(b) assure for all Montanans safe, healthful, productive, and aesthetically and culturally pleasing surroundings;

(c) attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

(d) preserve important historic, cultural, and natural aspects of our unique heritage and maintain, wherever possible, an environment which supports diversity and variety of individual choice;

(e) achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

(f) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(3) The legislature recognizes that each person shall be entitled to a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

History: **En. Sec. 3, Ch. 238, L. 1971; R.C.M. 1947, 69-6503.**

75-1-104. Specific statutory obligations unimpaired. Nothing in 75-1-103 or 75-1-201 shall in any way affect the specific statutory obligations of any agency of the state to:

(1) comply with criteria or standards of environmental quality;

(2) coordinate or consult with any other state or federal agency; or

(3) act or refrain from acting contingent upon the recommendations or certification of any other state or federal agency.

History: **En. Sec. 6, Ch. 238, L. 1971; R.C.M. 1947, 69-6506.**

75-1-105. Policies and goals supplementary. The policies and goals set forth in this chapter are supplementary to those set forth in existing authorizations of all boards, commissions, and agencies of the state.

History: **En. Sec. 7, Ch. 238, L. 1971; R.C.M. 1947, 69-6507.**

Part 2

Environmental Impact Statements

75-1-201. General directions — environmental impact statements. (1) The legislature authorizes and directs that, to the fullest extent possible:

(a) the policies, regulations, and laws of the state shall be interpreted and administered in accordance with the policies set forth in this chapter;

(b) all agencies of the state, except as provided in subsection (2), shall:

(i) utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment;

(ii) identify and develop methods and procedures which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations;

(iii) include in every recommendation or report on proposals for projects, programs, legislation, and other major actions of state government significantly affecting the quality of the human environment, a detailed statement on:

(A) the environmental impact of the proposed action;

(B) any adverse environmental effects which cannot be avoided should the proposal be implemented;

(C) alternatives to the proposed action;

(D) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity; and

(E) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented;

(iv) study, develop, and describe appropriate alternatives to recommend courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;

(v) recognize the national and long-range character of environmental problems and, where consistent with the policies of the state, lend appropriate support to initiatives, resolutions, and programs designed to maximize national cooperation in anticipating and preventing a decline in the quality of mankind's world environment;

(vi) make available to counties, municipalities, institutions, and individuals advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(vii) initiate and utilize ecological information in the planning and development of resource-oriented projects; and

(viii) assist the environmental quality council established by 5-16-101; and

(c) prior to making any detailed statement as provided in subsection (1)(b)(iii), the responsible state official shall consult with and obtain the comments of any state agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate state, federal, and local agencies which are authorized to develop and enforce environmental standards shall be made available to the governor, the environmental quality council, and the public and shall accompany the proposal through the existing agency review processes.

(2) The department of public service regulation, in the exercise of its regulatory authority over rates and charges of railroads, motor carriers, and public utilities, is exempt from the provisions of this chapter.

History: En. Sec. 4, Ch. 238, L. 1971; R.C.M. 1947, 69-6504; amd. Sec. 1, Ch. 391, L. 1979.

Compiler's Comments

Effective date. Sec. 2, Ch. 391, L. 1979, provided: "This act is effective on passage and approval." Approved March 30, 1979.

75-1-202. Agency rules to prescribe fees. Each agency of state government charged with the responsibility of issuing a lease, permit, contract, license, or certificate under any provision of state law may adopt rules prescribing fees which shall be paid by a person, corporation, partnership, firm, association, or other private entity when an application for a lease, permit, contract, license, or certificate will require an agency to compile an environmental impact statement as prescribed by 75-1-201. An agency must determine within 30 days after a completed application is filed whether it will be necessary to compile an environmental impact statement and assess a fee as prescribed by this part. The fee assessed under this part shall be used only to gather data and information necessary to compile an environmental impact statement as defined in this chapter. No fee may be assessed if an agency intends only to file a negative declaration stating that the proposed project will not have a significant impact on the human environment.

History: En. 69-6518 by Sec. 1, Ch. 329, L. 1975; R.C.M. 1947, 69-6518(1).

75-1-203. Fee schedule — maximums. (1) In prescribing fees to be assessed against applicants for a lease, permit, contract, license, or certificate as specified in 75-1-202, an agency may adopt a fee schedule which may be adjusted depending upon the size and complexity of the proposed project. No fee may be assessed unless the application for a lease, permit, contract, license, or certificate will result in the agency incurring expenses in excess of $2,500 to compile an environmental impact statement.

(2) The maximum fee that may be imposed by an agency shall not exceed 2% of any estimated cost up to $1 million, plus 1% of any estimated cost over $1 million and up to $20 million, plus ½ of 1% of any estimated cost over $20 million and up to $100 million, plus ¼ of 1% of any estimated cost over $100 million and up to $300 million, plus ⅛ of 1% of any estimated cost in excess of $300 million.

(3) If an application consists of two or more facilities, the filing fee shall be based on the total estimated cost of the combined facilities. The estimated cost shall be determined by the agency and the applicant at the time the application is filed.

(4) Each agency shall review and revise its rules imposing fees as authorized by this part at least every 2 years. Furthermore, each agency shall provide the legislature with a complete report on the fees collected prior to the time that a request for an appropriation is made to the legislature.

History: En. 69-6518 by Sec. 1, Ch. 329, L. 1975; R.C.M. 1947, 69-6518(2), (7).

75-1-204. Application of administrative procedure act. In adopting rules prescribing fees as authorized by this part, an agency shall comply with the provisions of the Montana Administrative Procedure Act.

History: En. 69-6518 by Sec. 1, Ch. 329, L. 1975; R.C.M. 1947, 69-6518(4).

75-1-205. Use of fees. All fees collected under this part shall be deposited in the state earmarked revenue fund as provided in 17-2-102. All fees paid pursuant to this part shall be used as herein provided. Upon completion of the necessary work, each agency will make an accounting to the applicant of the funds expended and refund all unexpended funds without interest.

History: En. 69-6518 by Sec. 1, Ch. 329, L. 1975; R.C.M. 1947, 69-6518(5).

75-1-206. Multiple applications or combined facility. In cases where a combined facility proposed by an applicant requires action by more than one agency or multiple applications for the same facility, the governor shall designate a lead agency to collect one fee pursuant to this part, to coordinate the preparation of information required for all environmental impact statements which may be required, and to allocate and disburse the necessary funds to the other agencies which require funds for the completion of the necessary work.

History: En. 69-6518 by Sec. 1, Ch. 329, L. 1975; R.C.M. 1947, 69-6518(6).

75-1-207. Major facility siting applications excepted. No fee as prescribed by this part may be assessed against any person, corporation, partnership, firm, association, or other private entity filing an application for a certificate under the provisions of the Montana Major Facility Siting Act, chapter 20 of this title.

History: En. 69-6518 by Sec. 1, Ch. 329, L. 1975; R.C.M. 1947, 69-6518(3).

Part 3

Environmental Quality Council

75-1-301. Definition of council. In this part "council" means the environmental quality council provided for in 5-16-101.

History: En. by Code Commissioner, 1979.

75-1-302. Meetings. The council may determine the time and place of its meetings but shall meet at least once each quarter. Each member of the council is entitled to receive compensation and expenses as provided in 5-2-302. Members who are full-time salaried officers or employees of this state may not be compensated for their service as members but shall be reimbursed for their expenses.

History: En. Sec. 10, Ch. 238, L. 1971; amd. Sec. 6, Ch. 103, L. 1977; R.C.M. 1947, 69-6510.

75-1-303 through 75-1-310 reserved.

75-1-311. Examination of records of government agencies. The council shall have the authority to investigate, examine, and inspect all records, books, and files of any department, agency, commission, board, or institution of the state of Montana.

History: En. Sec. 15, Ch. 238, L. 1971; R.C.M. 1947, 69-6515.

75-1-312. Hearings — council subpoena power — contempt proceedings. In the discharge of its duties the council shall have authority to hold hearings, administer oaths, issue subpoenas, compel the attendance of witnesses and the production of any papers, books, accounts, documents, and testimony, and to cause depositions of witnesses to be taken in the manner prescribed by law for taking depositions in civil actions in the district court. In case of disobedience on the part of any person to comply with any subpoena issued on behalf of the council or any committee thereof or of the refusal of any witness to testify on any matters regarding which he may be lawfully interrogated, it shall be the duty of the district court of any county or the judge thereof, on application of the council, to compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from such court on a refusal to testify therein.

History: En. Sec. 16, Ch. 238, L. 1971; R.C.M. 1947, 69-6516.

75-1-313. Consultation with other groups — utilization of services. In exercising its powers, functions, and duties under this chapter, the council shall:

(1) consult with such representatives of science, industry, agriculture, labor, conservation organizations, educational institutions, local governments, and other groups as it deems advisable; and

(2) utilize, to the fullest extent possible, the services, facilities, and information (including statistical information) of public and private agencies and organizations and individuals in order that duplication of effort and expense may be avoided, thus assuring that the council's activities will not unnecessarily overlap or conflict with similar activities authorized by law and performed by established agencies.

History: En. Sec. 17, Ch. 238, L. 1971; R.C.M. 1947, 69-6517.

75-1-314 through 75-1-320 reserved.

75-1-321. Appointment and qualifications of executive director. The council shall appoint the executive director and set his salary. The executive director shall hold a degree from an accredited college or university with a major in one of the several environmental sciences and shall have at least 3 years of responsible experience in the field of environmental management. He shall be a person who, as a result of his training, experience, and attainments, is exceptionally well qualified to analyze and interpret environmental trends and information of all kinds; to appraise programs and activities of the state government in the light of the policy set forth in 75-1-103; to be conscious of and responsive to the scientific, economic, social, aesthetic, and cultural needs and interests of the state; and to formulate and recommend state policies to promote the improvement of the quality of the environment.

History: **En. Sec. 11, Ch. 238, L. 1971; R.C.M. 1947, 69-6511.**

75-1-322. Term and removal of executive director. The executive director is solely responsible to the council. He shall hold office for a term of 2 years beginning with July 1 of each odd-numbered year. The council may remove him for misfeasance, malfeasance, or nonfeasance in office at any time after notice and hearing.

History: **En. Sec. 13, Ch. 238, L. 1971; R.C.M. 1947, 69-6513.**

75-1-323. Appointment of employees. The executive director, subject to the approval of the council, may appoint whatever employees are necessary to carry out the provisions of this chapter, within the limitations of legislative appropriations.

History: **En. Sec. 12, Ch. 238, L. 1971; R.C.M. 1947, 69-6512.**

75-1-324. Duties of executive director and staff. It shall be the duty and function of the executive director and his staff to:

(1) gather timely and authoritative information concerning the conditions and trends in the quality of the environment, both current and prospective, analyze and interpret such information for the purpose of determining whether such conditions and trends are interfering or are likely to interfere with the achievement of the policy set forth in 75-1-103, and compile and submit to the governor and the legislature studies relating to such conditions and trends;

(2) review and appraise the various programs and activities of the state agencies, in the light of the policy set forth in 75-1-103, for the purpose of determining the extent to which such programs and activities are contributing to the achievement of such policy and make recommendations to the governor and the legislature with respect thereto;

(3) develop and recommend to the governor and the legislature state policies to foster and promote the improvement of environmental quality to meet the conservation, social, economic, health, and other requirements and goals of the state;

(4) conduct investigations, studies, surveys, research, and analyses relating to ecological systems and environmental quality;

(5) document and define changes in the natural environment, including the plant and animal systems, and accumulate necessary data and other information for a continuing analysis of these changes or trends and an interpretation of their underlying causes;

(6) make and furnish such studies, reports thereon, and recommendations with respect to matters of policy and legislation as the legislature requests;

(7) analyze legislative proposals in clearly environmental areas and in other fields where legislation might have environmental consequences and assist in preparation of reports for use by legislative committees, administrative agencies, and the public;

(8) consult with and assist legislators who are preparing environmental legislation to clarify any deficiencies or potential conflicts with an overall ecologic plan;

(9) review and evaluate operating programs in the environmental field in the several agencies to identify actual or potential conflicts, both among such activities and with a general ecologic perspective, and suggest legislation to remedy such situations;

(10) annually, beginning July 1, 1972, transmit to the governor and the legislature and make available to the general public an environmental quality report concerning the state of the environment, which shall contain:

(a) the status and condition of the major natural, manmade, or altered environmental classes of the state, including but not limited to the air, the aquatic (including surface water and groundwater) and the terrestrial environments, including but not limited to the forest, dryland, wetland, range, urban, suburban, and rural environments;

(b) the adequacy of available natural resources for fulfilling human and economic requirements of the state in the light of expected population pressures;

(c) current and foreseeable trends in the quality, management, and utilization of such environments and the effects of those trends on the social, economic, and other requirements of the state in the light of expected population pressures;

(d) a review of the programs and activities (including regulatory activities) of the state and local governments and nongovernmental entities or individuals, with particular reference to their effect on the environment and on the conservation, development, and utilization of natural resources; and

(e) a program for remedying the deficiencies of existing programs and activities, together with recommendations for legislation.

History: En. Sec. 14, Ch. 238, L. 1971; R.C.M. 1947, 69-6514.

CHAPTER 2

AIR QUALITY

Part 1 — General Provisions and Administration

Section

75-2-101. Short title.
75-2-102. Policy and purpose.
75-2-103. Definitions.
75-2-104. Limitations — personal cause of action unabridged.

75-2-105. Confidentiality of records.
Sections 75-2-106 through 75-2-110 reserved.
75-2-111. Powers of board.
75-2-112. Powers and responsibilities of department.
Sections 75-2-113 through 75-2-120 reserved.
75-2-121. Advisory council.
75-2-122. Chairman — secretary.
75-2-123. Meetings.

Part 2 — Standards, Permits, and Variances

75-2-201. Classifying and reporting air contaminant sources.
75-2-202. Board to set ambient air quality standards.
75-2-203. Board to set emission levels.
75-2-204. Rules relating to construction, installation, alteration, or use.
75-2-205. Public hearings on rules.
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75-2-211. Permits for construction, installation, alteration, or use.
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Part 1

General Provisions and Administration

75-2-101. Short title. This chapter shall be known and may be cited as the "Clean Air Act of Montana".

History: En. Sec. 1, Ch. 313, L. 1967; R.C.M. 1947, 69-3904.

75-2-102. Policy and purpose. (1) It is hereby declared to be the public policy of this state and the purpose of this chapter to achieve and maintain such levels of air quality as will protect human health and safety and, to the greatest degree practicable, prevent injury to plant and animal life and property, foster the comfort and convenience of the people, promote the economic and social development of this state, and facilitate the enjoyment of the natural attractions of this state.

(2) It is also declared that local and regional air pollution control programs are to be supported to the extent practicable as essential instruments for the securing and maintenance of appropriate levels of air quality.

(3) To these ends it is the purpose of this chapter to:

(a) provide for a coordinated statewide program of air pollution prevention, abatement, and control;

(b) provide for an appropriate distribution of responsibilities among the state and local units of government;

(c) facilitate cooperation across jurisdictional lines in dealing with problems of air pollution not confined within single jurisdictions; and

(d) provide a framework within which all values may be balanced in the public interest.

History: En. Sec. 2, Ch. 313, L. 1967; R.C.M. 1947, 69-3905.

75-2-103. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Advisory council" means the air pollution control advisory council provided for in 2-15-2106.

(2) "Air contaminant" means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substances, or any combination thereof.

(3) "Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants in a quantity and for a duration which are or tend to be injurious to human health or welfare, animal or plant life, or property or would unreasonably interfere with the enjoyment of life, property, or the conduct of business.

(4) "Board" means the board of health and environmental sciences provided for in 2-15-2104.

(5) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(6) "Emission" means a release into the outdoor atmosphere of air contaminants.

(7) "Person" means an individual, partnership, firm, association, municipality, public or private corporation, subdivision or agency of the state, trust, estate, or any other legal entity and includes persons resident in Canada.

History: En. Sec. 3, Ch. 313, L. 1967; amd. Sec. 13, Ch. 349, L. 1974; amd. Sec. 1, Ch. 308, L. 1977; R.C.M. 1947, 69-3906.

75-2-104. Limitations — personal cause of action unabridged. Nothing in this chapter shall be construed to:

(1) grant to the board any jurisdiction or authority with respect to air contamination existing solely within commercial and industrial plants, works, or shops;

(2) affect the relations between employers and employees with respect to or arising out of any condition of air contamination or air pollution;

(3) supersede or limit the applicability of any law or ordinance relating to sanitation, industrial health, or safety;

(4) abridge, limit, impair, create, enlarge, or otherwise affect substantively or procedurally the right of a person to damages or other relief on account

of injury to persons or property and to maintain an action or other appropriate proceeding.

History: (1) thru (3)En. Sec. 19, Ch. 313, L. 1967; Sec. 69-3922, R.C.M. 1947; (4)En. Sec. 18, Ch. 313, L. 1967; amd. Sec. 24, Ch. 349, L. 1974; Sec. 69-3921, R.C.M. 1947; R.C.M. 1947, 69-3921(4), 69-3922.

75-2-105. Confidentiality of records. (1) Records or other information concerning air contaminant sources which are furnished to or obtained by the board or department are a matter of public record and open to public use. However, any information unique to the owner or operator of an air contaminant source which would, if disclosed, reveal methods or processes entitled to protection as trade secrets shall be maintained as confidential if so determined by a court of competent jurisdiction. The owner or operator shall file a declaratory judgment action to establish the existence of a trade secret if he wishes such information to enjoy confidential status. The department shall be served in any such action and may intervene as a party therein. Any trade secrets not intended to be public when submitted to the board or department shall be submitted in writing and clearly marked as confidential. However, emission data shall never be considered confidential for the purposes of this section.

(2) This section does not prevent the use of records or information by the board or department in compiling or publishing analyses or summaries relating to the general condition of the outdoor atmosphere if the analyses or summaries do not identify an owner or operator or reveal information otherwise made confidential by this section.

History: En. Sec. 15, Ch. 313, L. 1967; amd. Sec. 22, Ch. 349, L. 1974; amd. Sec. 1, Ch. 248, L. 1975; R.C.M. 1947, 69-3918.

75-2-106 through 75-2-110 reserved.

75-2-111. Powers of board. The board shall:

(1) adopt, amend, and repeal rules for the administration, implementation, and enforcement of this chapter, for issuing orders under and in accordance with 42 U.S.C. 7419, and for fulfilling the requirements of 42 U.S.C. 7420 and regulations adopted pursuant thereto;

(2) hold hearings relating to any aspect of or matter in the administration of this chapter at a place designated by the board. The board may compel the attendance of witnesses and the production of evidence at hearings. The board shall designate an attorney to assist in conducting hearings and shall appoint a reporter who shall be present at all hearings and take full stenographic notes of all proceedings thereat, transcripts of which will be available to the public at cost.

(3) issue orders necessary to effectuate the purposes of this chapter;

(4) by rule require access to records relating to emissions;

(5) by rule adopt a schedule of fees required for permits under this chapter;

(6) have the power to issue orders under and in accordance with 42 U.S.C. 7419.

History: En. Sec. 6, Ch. 313, L. 1967; amd. Sec. 17, Ch. 349, L. 1974; R.C.M. 1947, 69-3909(1) thru (4); amd. Sec. 1, Ch. 560, L. 1979.

Compiler's Comments

Statement of intent. The statement of intent attached to HB 716 (Ch. 560, L. 1979) provided: "The Legislature intends to grant to the Board of Health and Environmental Sciences rulemaking authority to adopt a permit fee schedule, and to adopt a schedule of penalty assessments for noncompliance with respect to any source under sections 7 through 15 of this act."

75-2-112. Powers and responsibilities of department. (1) The department is responsible for the administration of this chapter.

(2) The department shall:

(a) by appropriate administrative and judicial proceedings, enforce orders issued by the board;

(b) secure necessary scientific, technical, administrative, and operational services, including laboratory facilities, by contract or otherwise;

(c) prepare and develop a comprehensive plan for the prevention, abatement, and control of air pollution in this state;

(d) encourage voluntary cooperation by persons and affected groups to achieve the purposes of this chapter;

(e) encourage local units of government to handle air pollution problems within their respective jurisdictions on a cooperative basis and provide technical and consultative assistance for this. If local programs are financed with public funds, the department may contract with the local government to share the cost of the program. However, the state share may not exceed 30% of the total cost.

(f) encourage and conduct studies, investigations, and research relating to air contamination and air pollution and their causes, effects, prevention, abatement, and control;

(g) determine, by means of field studies and sampling, the degree of air contamination and air pollution in the state;

(h) make a continuing study of the effects of the emission of air contaminants from motor vehicles on the quality of the outdoor atmosphere of this state and make recommendations to appropriate public and private bodies with respect to this;

(i) collect and disseminate information and conduct educational and training programs relating to air contamination and air pollution;

(j) advise, consult, contract, and cooperate with other agencies of the state, local governments, industries, other states, interstate and interlocal agencies, the United States, and any interested persons or groups;

(k) consult, on request, with any person proposing to construct, install, or otherwise acquire an air contaminant source or device or system for the control thereof concerning the efficacy of this device or system or the air pollution problems which may be related to the source, device, or system. Nothing in this consultation relieves a person from compliance with this chapter, rules in force under it, or any other provision of law.

(l) accept, receive, and administer grants or other funds or gifts from public or private agencies, including the United States, for the purpose of carrying out this chapter. Funds received under this section shall be deposited in the state treasury to the account of the department.

(3) The department may assess fees to the applicant for the analysis of the environmental impact of an application to redesignate the classification of any area, except those areas within the exterior boundaries of a reservation of a federally recognized Indian tribe, under the classifications established by 42 U.S.C. 7470 through 7479 (prevention of significant deterioration

of air quality). The determination of whether or not a fee will be assessed is to be on a case-by-case basis.

History: (1)En. Sec. 4, Ch. 313, L. 1967; amd. Sec. 14, Ch. 349, L. 1974; Sec. 69-3907, R.C.M. 1947; (2)En. 69-3909.1 by Sec. 18, Ch. 349, L. 1974; Sec. 69-3909.1, R.C.M. 1947; R.C.M. 1947, 69-3907, 69-3909.1; (3)En. Sec. 2, Ch. 560, L. 1979.

75-2-113 through 75-2-120 reserved.

75-2-121. Advisory council. The advisory council shall act in an advisory capacity to the department on matters relating to air pollution.

History: En. Sec. 5, Ch. 313, L. 1967; amd. Sec. 16, Ch. 349, L. 1974; R.C.M. 1947, 69-3908(4).

75-2-122. Chairman — secretary. (1) A chairman shall be elected by the advisory council from among its number.

(2) The secretary of the advisory council shall be a member of the staff of the department, designated by the director. The secretary shall keep all records of meetings of and actions taken by the council. He shall keep the advisory council advised as to actions taken by persons in response to recommendations and orders issued under this chapter and shall perform other duties as determined by the advisory council, not inconsistent with rules and policies adopted under this chapter or specific authority otherwise given the advisory council.

History: En. Sec. 5, Ch. 313, L. 1967; amd. Sec. 16, Ch. 349, L. 1974; R.C.M. 1947, 69-3908(1), (3).

75-2-123. Meetings. The advisory council shall hold at least two regular meetings each calendar year and shall keep a summary record of its proceedings which shall be open to the public for inspection. Special meetings may be called by the chairman and must be called by him on receipt of a written request signed by two or more members of the advisory council. Notice of the time and place for meetings shall be given in advance to each member of the advisory council by the secretary.

History: En. Sec. 5, Ch. 313, L. 1967; amd. Sec. 16, Ch. 349, L. 1974; R.C.M. 1947, 69-3908(2).

Part 2

Standards, Permits, and Variances

75-2-201. Classifying and reporting air contaminant sources. (1) The board may classify air contaminant sources which in its judgment may cause or contribute to air pollution according to levels and types of emissions and other characteristics which relate to air pollution and may require reporting for any such class or classes. Such classifications shall be made with special reference to effects on health, economic and social factors, and physical effects on property and may be applied to the state as a whole or to any designated area.

(2) Any person operating or responsible for the operation of air contaminant sources of any class for which the rules of the board may require reporting shall make reports containing such information as may be required concerning location, size and height of contaminant outlets, processes

employed, fuels used, and the nature and time periods or duration of emissions and any other matter relevant to air pollution which is available or reasonably capable of being assembled.

History: En. Sec. 7, Ch. 313, L. 1967; R.C.M. 1947, 69-3910.

75-2-202. Board to set ambient air quality standards. (1) The board shall establish ambient air quality standards for the state.

(2) Ambient air quality standards for fluorides shall be established through limitations upon the concentration of fluorides in forage grasses, hay, and silage.

History: En. Sec. 6, Ch. 313, L. 1967; amd. Sec. 17, Ch. 349, L. 1974; R.C.M. 1947, 69-3909(5); amd. Sec. 1, Ch. 565, L. 1981.

Compiler's Comments

1981 Amendment: Added subsection (2).

Statement of Intent: The statement of intent attached to HB 642 (Ch. 565, L. 1981) provided: "The intent of HB 642 is to amend Section 75-2-202 of the Montana Clean Air Act in order to limit the authority of the Board of Health and Environmental Sciences to set standards regulating fluoride pollution.

HB 642 requires that an air quality standard be established for fluoride but that any such standard shall be established only in terms of concentrations of fluorides in forage grasses, hay, and silage.

By confining the fluoride standard to concentration in forage grasses, hay, and silage, the bill prevents the Board of Health and Environmental Sciences from adopting an air quality standard governing fluoride in its gaseous state (HF)."

Effective Date: Section 2, Ch. 565, L. 1981, provided: "This act is effective on passage and approval." Approved April 29, 1981.

75-2-203. Board to set emission levels. (1) The board may establish the limitations of the levels, concentrations, or quantities of emissions of various pollutants from any source necessary to prevent, abate, or control air pollution. Except as otherwise provided in or pursuant to this section, such levels, concentrations, or quantities shall be controlling, and no emission in excess thereof shall be lawful.

(2) In any area where the concentration of air pollution sources or of population or where the nature of the economy or of land and its uses so require, the board may fix more stringent requirements governing the emission of air pollutants than those in effect pursuant to subsection (1) of this section.

(3) The board may by rule use any widely recognized measuring system for measuring emission of air contaminants.

(4) Should federal minimum standards of air pollution be set by federal law, the board may, if necessary in some localities of this state, set more stringent standards by rule.

History: En. Sec. 10, Ch. 313, L. 1967; R.C.M. 1947, 69-3913.

Compiler's Comments

Resolution Repealing Emission Standard: HJR 22 (1981) repealed a state air quality emission standard in conflict with another state air quality standard.

75-2-204. Rules relating to construction, installation, alteration, or use. The board may by rule prohibit the construction, installation, alteration, or use of a machine, equipment, device, or facility which it finds may directly or indirectly cause or contribute to air pollution or which is intended primarily to prevent or control the emission of air pollutants, unless a permit therefor has been obtained.

History: En. Sec. 8, Ch. 313, L. 1967; amd. Sec. 1, Ch. 185, L. 1975; amd. Sec. 4, Ch. 140, L. 1977; R.C.M. 1947, 69-3911(1).

75-2-205. Public hearings on rules. No rule and no amendment or repeal thereof may take effect except after public hearing on due notice and after the advisory council has been given, at the time of publication, the proposed text to comment thereon. Such notice shall be given and any hearing conducted in accordance with the provisions of the Montana Administrative Procedure Act and rules made pursuant thereto.

History: En. Sec. 14, Ch. 313, L. 1967; amd. Sec. 9, Ch. 140, L. 1977; R.C.M. 1947, 69-3917(1); amd. Sec. 3, Ch. 560, L. 1979.

75-2-206 through 75-2-210 reserved.

75-2-211. Permits for construction, installation, alteration, or use. (1) The department shall provide for the issuance, suspension, revocation, and renewal of a permit issued under this section.

(2) Not later than 180 days before construction begins of any machine, equipment, device, or facility which the board finds may directly or indirectly cause or contribute to air pollution or which is intended primarily to prevent or control the emission of air pollutants and not later than 120 days before installation, alteration, or use begins, the owner or operator shall file with the department the appropriate permit application on forms available from the department and pay to the department a fee sufficient to cover:

(a) the reasonable costs of reviewing and acting upon the application for such permit; and

(b) the reasonable costs of implementing and enforcing the terms and conditions of such permit if the permit is granted (not including any court costs or other costs associated with any enforcement action). The fee shall be deposited in an earmarked revenue fund to be used by the department for administration of this section.

(3) Nothing in this section shall restrict the board's authority to adopt regulations providing for a single air quality permit system.

(4) The department may, for good cause shown, waive or shorten the time required for filing the appropriate applications.

(5) The department shall require that applications for permits be accompanied by any plans, specifications, and other information it considers necessary.

(6) An application is not considered filed until the applicant has submitted all information and completed all application forms required by subsections (2), (3), and (4). However, if the department fails to notify the applicant in writing within 30 days after the purported filing of an application that the application is incomplete and fails to list the reasons why the application is considered incomplete, the application is considered filed as of the date of the purported filing.

(7) Where an application for a permit requires the compilation of an environmental impact statement under the Montana Environmental Policy Act, the department shall notify the applicant in writing within 180 days of the receipt of a filed application, as defined in subsection (5), of the approval or denial of the application. However, where an application does not require the compilation of an environmental impact statement, the department shall notify the applicant in writing within 60 days of the receipt of a filed application, as defined in subsection (5), of the approval or denial of the application. Notification of approval or denial may be served personally or by registered or certified mail on the applicant or his agent.

(8) When the department approves or denies the application for a permit under this section, a person who is jointly or severally adversely affected by the department's decision may request, within 15 days after the department renders its decision, upon affidavit setting forth the grounds therefor, a hearing before the board. A hearing shall be held under the provisions of the Montana Administrative Procedure Act.

(9) The department's decision on the application is not final unless 15 days have elapsed and there is no request for a hearing under this section. The filing of a request for a hearing postpones the effective date of the department's decision until the conclusion of the hearing and issuance of a final decision by the board.

History: En. Sec. 8, Ch. 313, L. 1967; amd. Sec. 1, Ch. 185, L. 1975; amd. Sec. 4, Ch. 140, L. 1977; R.C.M. 1947, 69-3911(part); amd. Sec. 4, Ch. 560, L. 1979.

75-2-212. Variances — renewals — filing fees. (1) A person who owns or is in control of a plant, building, structure, process, or equipment may apply to the board for an exemption or partial exemption from rules governing the quality, nature, duration, or extent of emissions of air pollutants. The application shall be accompanied by such information and data as the board may require. The board may grant an exemption or partial exemption if it finds that:

(a) the emissions occurring or proposed to occur do not constitute a danger to public health or safety; and

(b) compliance with the rules from which exemption is sought would produce hardship without equal or greater benefits to the public.

(2) No exemption or partial exemption may be granted pursuant to this section except after public hearing on due notice and until the board has considered the relative interests of the applicant, other owners or property likely to be affected by the emissions, and the general public.

(3) No exemption or partial exemption may be granted pursuant to this section for a period to exceed 1 year, but the exemption or partial exemption may be renewed for like periods if no complaint is made to the board because of it or if, after the complaint has been made and duly considered at a public hearing held by the board on due notice, the board finds that renewal is justified. No renewal may be granted except on application therefor. An application shall be made at least 60 days before the expiration of the exemption or partial exemption. Immediately before application for renewal the applicant shall give public notice of his application in accordance with rules of the board. A renewal pursuant to this subsection shall be on the same grounds and subject to the same limitations and requirements as provided in subsection (1).

(4) An exemption, partial exemption, or renewal thereof is not a right of the applicant or holder thereof but shall be granted at the discretion of the board. However, a person adversely affected by an exemption, partial exemption, or renewal granted by the board may obtain judicial review thereof as provided by 75-2-411.

(5) Nothing in this section and no exemption, partial exemption, or renewal granted pursuant to this section may be construed to prevent or limit the application of the emergency provisions and procedures of 75-2-402 to a person or his property.

(6) A person who owns or is in control of a plant, building, structure, process, or equipment (hereinafter called a facility) who applies to the board for an exemption or partial exemption or a renewal of an exemption or partial exemption from a rule governing the quality, nature, duration, or extent of emissions of air pollutants shall submit with the application for variance a sum of not less than $500 or 2% of the cost of the equipment to bring the facility into compliance with the rule for which a variance is sought, whichever is greater, but not to exceed $80,000. The department shall prepare a statement of actual costs, and funds in excess of this shall be returned to the applicant. The person requesting the variance shall describe the facility in sufficient detail, with accompanying estimates of cost and verifying materials, to permit the department to determine with reasonable accuracy the sum of the fee. For a renewal of an exemption or partial exemption, if no public hearing, environmental impact statement, or appreciable investigation by the department is necessary, the minimum filing fee shall apply or the fee may be waived by the department. The filing fee shall be deposited in the earmarked revenue fund provided for in 17-2-102. It is the intent of the legislature that the revenues derived from the filing fees shall be used by the department to:

(a) compile the information required for rendering a decision on the request;

(b) compile the information necessary for any environmental impact statements;

(c) offset the costs of a public hearing, printing, or mailing; and

(d) carry out its other responsibilities under this chapter.

History: En. Sec. 13, Ch. 313, L. 1967; amd. Sec. 1, Ch. 186, L. 1975; amd. Sec. 8, Ch. 140, L. 1977; R.C.M. 1947, 69-3916.

Part 3

Local Air Pollution Control

75-2-301. Local air pollution control programs. (1) A municipality or county may establish a local air pollution control program on being petitioned by 15% of the qualified electors in its jurisdiction and, if the program is consistent with this chapter and is approved by the board after a public hearing conducted under 75-2-111, may thereafter administer in its jurisdiction the air pollution control program which:

(a) provides by ordinance or local law for requirements compatible with, more stringent, or more extensive than those imposed by 75-2-203, 75-2-212, and 75-2-402 and rules issued under these sections;

(b) provides for the enforcement of these requirements by appropriate administrative and judicial process; and

(c) provides for administrative organization, staff, financial, and other resources necessary to effectively and efficiently carry out its program.

(2) If the board finds that the location, character, or extent of particular concentrations of population, air contaminant sources, or geographic, topographic, or meteorological considerations or any combination of these are such as to make impracticable the maintenance of appropriate levels of air

quality without an areawide air pollution control program, the board may determine the boundaries within which the program is necessary and require it as the only acceptable alternative to direct state administration.

(3) If the board has reason to believe that an air pollution control program in force under this section is inadequate to prevent and control air pollution in the jurisdiction to which the program relates or that the program is being administered in a manner inconsistent with this chapter, the board shall, on notice, conduct a hearing on the matter.

(4) If, after the hearing, the board determines that the program is inadequate to prevent and control air pollution in the jurisdiction to which it relates or that it is not accomplishing the purposes of this chapter, it shall require that necessary corrective measures be taken within a reasonable time, not to exceed 60 days.

(5) If the jurisdiction fails to take these measures within the time required, the department shall administer within such jurisdiction all of the provisions of this chapter. The department's control program supersedes all municipal or county air pollution laws, rules, ordinances, and requirements in the affected jurisdiction. The cost of the program shall be a charge on the municipality or county.

(6) If the board finds that the control of a particular air contaminant source because of its complexity or magnitude is beyond the reasonable capability of the local jurisdiction or may be more efficiently and economically performed at the state level, it may direct the department to assume and retain control over that air contaminant source. No charge may be assessed against the jurisdiction therefor. Findings made under this subsection may be either on the basis of the nature of the sources involved or on the basis of their relationship to the size of the communities in which they are located.

(7) A jurisdiction in which the department administers its air pollution control program under subsection (5) of this section may, with the approval of the board, establish or resume an air pollution control program which meets the requirements of subsection (1) of this section.

(8) A municipality or county may administer all or part of its air pollution control program in cooperation with one or more municipalities or counties of this state or of other states.

History: En. Sec. 16, Ch. 313, L. 1967; amd. Sec. 23, Ch. 349, L. 1974; R.C.M. 1947, 69-3919; amd. Sec. 5, Ch. 560, L. 1979.

75-2-302. State and federal aid. (1) Any local air pollution control program meeting the requirements of this chapter and rules made pursuant thereto shall be eligible for state aid in an amount equal to 30% of the locally funded annual operating cost thereof.

(2) Subdivisions of the state may make application for, receive, administer, and expend any federal aid for the control of air pollution or the development and administration of programs related to air pollution control, provided that any such application is first submitted to and approved by the board. The board shall approve any such application if it is consistent with this chapter and any other applicable requirements of law.

History: En. Sec. 17, Ch. 313, L. 1967; R.C.M. 1947, 69-3920.

Part 4

Enforcement, Appeal, and Penalties

75-2-401. Enforcement. (1) When the department believes that a violation of this chapter or a rule made under it has occurred, it may cause written notice to be served personally or by registered or certified mail on the alleged violator or his agent. The notice shall specify the provision of this chapter or rule alleged to be violated and the facts alleged to constitute a violation and may include an order to take necessary corrective action within a reasonable period of time stated in the order. The order becomes final unless, within 30 days after the notice is received, the person named requests in writing a hearing before the board. On receipt of the request, the board shall schedule a hearing.

(2) If, after a hearing held under subsection (1) of this section, the board finds that violations have occurred, it shall either affirm or modify an order previously issued or issue an appropriate order for the prevention, abatement, or control of the emissions involved or for the taking of other corrective action it considers appropriate. An order issued as part of a notice or after a hearing may prescribe the date by which the violation shall cease and may prescribe time limits for particular action in preventing, abating, or controlling the emissions. If, after hearing on an order contained in a notice, the board finds that no violation is occurring, it shall rescind the order.

(3) Instead of issuing the order provided for in subsection (1), the department may either:

(a) require that the alleged violators appear before the board for a hearing at a time and place specified in the notice and answer the charges complained of; or

(b) initiate action under 75-2-412 or 75-2-413.

(4) This chapter does not prevent the board or department from making efforts to obtain voluntary compliance through warning, conference, or any other appropriate means.

(5) In connection with a hearing held under this section, the board may and on application by a party shall compel the attendance of witnesses and the production of evidence on behalf of the parties.

History: En. Sec. 11, Ch. 313, L. 1967; amd. Sec. 20, Ch. 349, L. 1974; amd. Sec. 6, Ch. 140, L. 1977; R.C.M. 1947, 69-3914; amd. Sec. 6, Ch. 560, L. 1979.

75-2-402. Emergency procedure. (1) Any other law to the contrary notwithstanding, if the department finds that a generalized condition of air pollution exists and that it creates an emergency requiring immediate action to protect human health or safety, the department shall order persons causing or contributing to the air pollution to immediately reduce or discontinue the emission of air contaminants. Upon issuance of this order, the department shall fix a place and time within 24 hours for a hearing to be held before the board. Within 24 hours after the commencement of the hearing and without adjournment, the board shall affirm, modify, or set aside the order of the department.

(2) In the absence of a generalized condition such as that referred to in subsection (1), if the department finds that emissions from the operation of

one or more air contaminant sources are causing imminent danger to human health or safety, it may order the person responsible for the operation in question to reduce or discontinue emissions immediately, without regard for 75-2-401. In this event, the requirements for hearing and affirmance, modification, or setting aside of orders as provided in subsection (1) apply.

(3) This section does not limit any power which the governor or any other officer may have to declare an emergency and act on the basis of this declaration, whether the power is conferred by statute or constitutional provisions or inheres in the office.

(4) Nothing in 75-2-205 may be construed to require a hearing before the issuance of an emergency order pursuant to this section.

History: (1) thru (3)En. Sec. 12, Ch. 313, L. 1967; amd. Sec. 21, Ch. 349, L. 1974; amd. Sec. 7, Ch. 140, L. 1977; Sec. 69-3915, R.C.M. 1947; (4)En. Sec. 14, Ch. 313, L. 1967; amd. Sec. 9, Ch. 140, L. 1977; Sec. 69-3917, R.C.M. 1947; R.C.M. 1947, 69-3915, 69-3917(2).

75-2-403. Inspections. (1) The department, for the purpose of ascertaining the state of compliance with this chapter and rules in force under it, may enter and inspect, at any reasonable time, any property, premises, or place, except a private residence, on or at which an air contaminant source is located or is being constructed or installed.

(2) A person may not refuse entry or access to an authorized representative of the department who presents appropriate credentials when the department requests entry for purposes of inspection. A person may not obstruct, hamper, or interfere with an inspection.

(3) At his request, the owner or operator of the premises shall receive a report stating all facts found which relate to compliance status.

History: En. Sec. 9, Ch. 313, L. 1967; amd. Sec. 19, Ch. 349, L. 1974; amd. Sec. 5, Ch. 140, L. 1977; R.C.M. 1947, 69-3912.

75-2-404 through 75-2-410 reserved.

75-2-411. Judicial review. (1) A person aggrieved by an order of the board or local control authority may apply for rehearing upon one or more of the following grounds and upon no other grounds:

(a) the board or local control authority acted without or in excess of its powers;

(b) the order was procured by fraud;

(c) the order is contrary to the evidence;

(d) the applicant has discovered new evidence, material to him, which he could not with reasonable diligence have discovered and produced at the hearing; or

(e) competent evidence was excluded to the prejudice of the applicant.

(2) The petition must be in such form and filed in such time as the board shall prescribe.

(3) (a) Within 30 days after the application for rehearing is denied or, if the application is granted, within 30 days after the decision on the rehearing, a party aggrieved thereby may appeal to the district court of the judicial district of the state which is the situs of property affected by the order.

(b) The appeal shall be taken by serving a written notice of appeal upon the chairman of the board, which service shall be made by the delivery of a copy of the notice to the chairman and by filing the original with the clerk of the court to which the appeal is taken. Immediately after service upon the board, the board shall certify to the district court the entire record and proceedings, including all testimony and evidence taken by the board. Immediately upon receiving the certified record, the district court shall fix a day for filing of briefs and hearing arguments on the cause and shall cause a notice of the same to be served upon the board and the appellant.

(c) The court shall hear and decide the cause upon the record of the board. The court shall determine whether or not the board regularly pursued its authority, whether or not the findings of the board were supported by substantial competent evidence, and whether or not the board made errors of law prejudicial to the appellant.

(4) Either the board or the person aggrieved may appeal from the decision of the district court to the supreme court. The proceedings before the supreme court shall be limited to a review of the record of the hearing before the board and of the district court's review of that record.

History: En. Sec. 14, Ch. 313, L. 1967; amd. Sec. 9, Ch. 140, L. 1977; R.C.M. 1947, 69-3917(3) thru (5).

75-2-412. Criminal penalties — injunction preserved. (1) A person who violates this chapter or a rule or order made under it, other than 75-2-105, is guilty of an offense and subject to a fine not to exceed $1,000. Each day of violation constitutes a separate offense.

(2) A person who willfully violates 75-2-105 is guilty of an offense and subject to a fine not to exceed $1,000.

(3) Fines collected shall be deposited to the state general fund.

(4) Action under this section is not a bar to enforcement of this chapter or of rules or orders made under it by injunction or other appropriate remedy. The department may institute and maintain in the name of the state any enforcement proceedings.

History: En. Sec. 18, Ch. 313, L. 1967; amd. Sec. 24, Ch. 349, L. 1974; R.C.M. 1947, 69-3921(1) thru (3), (5).

75-2-413. Civil penalties — out-of-state litigants — effect of action. (1) Any person who violates any provision of this chapter or any rule enforced thereunder or any order made pursuant thereto and after notice thereof has been given by the department shall be subject to a civil penalty not to exceed $10,000. Each day of violation shall constitute a separate violation. The department may institute and maintain in the name of the state any enforcement proceedings hereunder. Upon request of the department, the attorney general or the county attorney of the county of violation shall petition the district court to impose, assess, and recover the civil penalty. The civil penalty is in lieu of the criminal penalty provided for in 75-2-412.

(2) (a) Action under subsection (1) of this section is not a bar to enforcement of this chapter or of rules or orders made under it by injunction or other appropriate civil remedies.

(b) An action under subsection (1) or to enforce this chapter or the rules or orders made under it may be brought in the district court of any county where a violation occurs or is threatened if the defendant cannot be located in Montana.

(3) Moneys collected hereunder shall be deposited in the state general fund.

History: En. 69-3921.1 by Sec. 1, Ch. 98, L. 1975; amd. Sec. 2, Ch. 308, L. 1977; R.C.M. 1947, 69-3921.1; amd. Sec. 16, Ch. 560, L. 1979.

75-2-414 through 75-2-420 reserved.

75-2-421. Persons subject to noncompliance penalties — exemptions. (1) Except as provided in subsection (2), the department shall assess and collect a noncompliance penalty from any person who owns or operates:

(a) a stationary source (other than a primary nonferrous smelter which has received a nonferrous smelter order under 42 U.S.C. 7419) which is not in compliance with any emission limitation specified in an order of the board, emission standard, or compliance schedule under the state implementation plan approved by the federal environmental protection agency;

(b) a stationary source which is not in compliance with an emission limitation, emission standard, standard of performance, or other requirement under 42 U.S.C. 7411 or 42 U.S.C. 7412; or

(c) any source referred to in subsections (1)(a) or (1)(b) which has been granted an exemption, extension, or suspension under subsection (2) or which is covered by a compliance order, or a primary nonferrous smelter which has received a primary nonferrous smelter order under 42 U.S.C. 7419, if such source is not in compliance with any interim emission control requirement or schedule of compliance under such extension, order, or suspension.

(2) Notwithstanding the requirements of subsection (1), the department may, after notice and opportunity for a public hearing, exempt any source from the requirements of 75-2-421 through 75-2-429 with respect to a particular instance of noncompliance which:

(a) the department finds is de minimus in nature and in duration;

(b) is caused by conditions beyond the reasonable control of the source and is of no demonstrable advantage to the source; or

(c) is exempt under 42 U.S.C. 7420(a)(2)(B) of the federal Clean Air Act.

(3) Any person who is jointly or severally adversely affected by the department's decision may request, within 15 days after the department renders its decision, upon affidavit setting forth the grounds therefor, a hearing before the board. A hearing shall be held under the provisions of the Montana Administrative Procedure Act.

History: En. Sec. 7, Ch. 560, L. 1979.

Compiler's Comments

Codification. Sec. 17, Ch. 560, L. 1979, provided: "It is intended that sections 7 through 15 be codified as an integral part of Title 75, chapter 2, part 4, and the provisions of Title 75, chapter 2, apply to sections 7 through 15."

Saving clause. Sec. 18, Ch 560, L. 1979, provided: "This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act." Effective July 1, 1979.

Severability. Sec. 19, Ch 560, L. 1979, provided: "If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

75-2-422. Amount of noncompliance penalty — late charge. (1) The amount of the penalty which shall be assessed and collected with respect to any source under 75-2-421 through 75-2-429 shall be equal to:

(a) the amount determined in accordance with the rules adopted by the board, which shall be no less than the economic value which a delay in compliance after July 1, 1979, may have for the owner of such source, including the quarterly equivalent of the capital costs of compliance and debt service over a normal amortization period not to exceed 10 years, operation and maintenance costs foregone as a result of noncompliance, and any additional economic value which such a delay may have for the owner or operator of such source; minus

(b) the amount of any expenditure made by the owner or operator of that source during any such quarter for the purpose of bringing that source into and maintaining compliance with such requirement, to the extent that such expenditures have not been taken into account in the calculation of the penalty under subsection (1)(a).

(2) To the extent that any expenditure under subsection (1)(b) made during any quarter is not subtracted for such quarter from the costs under subsection (1)(a), such expenditure may be subtracted for any subsequent quarter from such costs. In no event may the amount paid be less than the quarterly payment minus the amount attributed to actual cost of construction.

(3) If the owner or operator of any stationary source to whom notice is issued under 75-2-425 does not submit a timely petition under 75-2-425(2)(b) or submits a petition which is denied and if the owner or operator fails to submit a calculation of the penalty assessment, a schedule for payment, and the information necessary for independent verification thereof, the department may enter into a contract with any person who has no financial interest in the matter to assist in determining the amount of the penalty assessment or payment schedule with respect to such source. The cost of carrying out such contract may be added to the penalty to be assessed against the owner or operator of such source.

(4) Any person who fails to pay the amount of any penalty with respect to any source under 75-2-421 through 75-2-429 on a timely basis shall be required to pay in addition a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be equal to 20% of the aggregate amount of such person's penalties and nonpayment penalties with respect to such source which are unpaid as of the beginning of such quarter.

History: En. Sec. 8, Ch. 560, L. 1979.

Compiler's Comments

Statement of intent. The statement of intent attached to HB 716 (Ch. 560, L. 1979) provided: "The Legislature intends to grant to the Board of Health and Environmental Sciences rulemaking authority to adopt a permit fee schedule, and to adopt a schedule of penalty assessments for noncompliance with respect to any source under sections 7 through 15 of this act."

75-2-423. Manner of making payment. (1) The assessed penalty required under 75-2-421 through 75-2-429 shall be paid in quarterly installments for the period of covered noncompliance. All quarterly payments, determined without regard to any adjustment or any subtraction under 75-2-422(1)(b), after the first payment shall be equal.

(2) The first payment shall be due on the date 6 months after the date of issuance of the notice of noncompliance under 75-2-425 with respect to any source. Such first payment shall be in the amount of the quarterly installment for the upcoming quarter, plus the amount owed for any preceding period within the period of covered noncompliance for such source.

(3) For the purpose of this section, the term "period of covered noncompliance" means the period which begins on the date of issuance of the notice of noncompliance under 75-2-425 and ends on the date on which such source comes into or, for the purpose of establishing the schedule of payments, is estimated to come into compliance with such requirement.

History: En. Sec. 9, Ch. 560, L. 1979.

75-2-424. Adjustment of fee. (1) The department shall adjust from time to time the amount of the penalty assessment calculated or the payment schedule proposed by such owner or operator under 75-2-425(2)(a) if the department finds after notice and opportunity for a hearing on the record that the penalty or schedule does not meet the requirements of 75-2-421 through 75-2-429.

(2) Upon making a determination that a source with respect to which a penalty has been paid under 75-2-421 through 75-2-429 is in compliance and is maintaining compliance with the applicable requirement, the department shall review the actual expenditures made by the owner or operator of such source for the purpose of attaining and maintaining compliance and shall make a final adjustment within 180 days after such source comes into compliance and:

(a) provide reimbursement with interest to be paid by the state at appropriate prevailing rates for overpayment by such person; or

(b) assess and collect an additional payment with interest at appropriate prevailing rates for any underpayment by such person.

History: En. Sec. 10, Ch. 560, L. 1979.

75-2-425. Notice of noncompliance — challenge. (1) The department shall give a brief but reasonably specific notice of noncompliance to each person who owns or operates a source subject to 75-2-421(1) which is not in compliance as provided in that subsection, within 30 days after the department has discovered the noncompliance.

(2) Each person to whom notice has been given pursuant to subsection (1) shall:

(a) calculate the amount of penalty owed (determined in accordance with 75-2-422(1)) and the schedule of payments (determined in accordance with 75-2-423) for each source and, within 45 days after issuance of the notice of noncompliance, submit that calculation and proposed schedule, together with the information necessary for an independent verification thereof, to the department; or

(b) submit to the board a petition within 45 days after the issuance of such notice, challenging such notice of noncompliance or alleging entitlement to an exemption under 75-2-421(2) with respect to a particular source.

(3) Each person to whom notice of noncompliance is given shall pay the department the amount determined under 75-2-422 as the appropriate penalty unless there has been a final determination granting a petition filed pursuant to subsection (2)(b).

History: En. Sec. 11, Ch. 560, L. 1979.

75-2-426. Hearing on challenge. (1) The board shall provide a hearing on the record and make a decision (including findings of fact and conclusions of law) not later than 90 days after the receipt of any petition under 75-2-425(2)(b) with respect to such source.

(2) If the petition is denied, the petitioner shall submit the material required by 75-2-425(2)(a) to the department within 45 days of the date of decision.

History: **En. Sec. 12, Ch. 560, L. 1979.**

75-2-427. Deposit of noncompliance penalty fees. All noncompliance penalties collected by the department pursuant to 75-2-421 through 75-2-429 shall be deposited in an earmarked revenue fund until a final determination and adjustment have been made as provided in 75-2-424 and amounts have been deducted by the department for costs attributable to implementation of 75-2-421 through 75-2-429 and for contract costs incurred pursuant to 75-2-422(3), if any. After a final determination has been made and additional payments or refunds have been made, the penalty money remaining shall be transferred to the state general fund.

History: **En. Sec. 13, Ch. 560, L. 1979.**

75-2-428. Effect of new standards on noncompliance penalty. In the case of any emission limitation, emission standard, or other requirement approved or adopted by the board under this chapter after July 1, 1979, and approved by the federal environmental protection agency as an amendment to the state implementation plan, which is more stringent than the emission limitation or requirement for the source in effect prior to such approval or promulgation, if any, or where there was no emission limitation, emission standard, or other requirement approved or adopted before July 1, 1979, the date for imposition of the noncompliance penalty under 75-2-421 through 75-2-429 shall be the date on which the source is required to be in full compliance with such emission limitation, emission standard, or other requirement or 3 years after the approval or promulgation of such emission limitation or requirement, whichever is sooner.

History: **En. Sec. 14, Ch. 560, L. 1979.**

75-2-429. Effect of noncompliance penalty on other remedies. (1) Any orders, payments, sanctions, or other requirements under 75-2-421 through 75-2-428 shall be in addition to any other permits, orders, payments, sanctions, or other requirements established under this chapter and shall in no way affect any civil or criminal enforcement proceedings brought under 75-2-412 or 75-2-413.

(2) The noncompliance penalties collected pursuant to 75-2-421 through 75-2-428 are intended to be cumulative and in addition to any other remedies, procedures, and requirements authorized by this chapter.

History: **En. Sec. 15, Ch. 560, L. 1979.**

CHAPTER 3

NUCLEAR REGULATION

Part 1 — General Provisions

Section

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Chapter Compiler's Comments

Referendum on Disposal of Uranium Mill Tailings: Section 18, Ch. 612, L. 1981, is a referendum on whether or not the state should allow disposal in Montana of uranium mill tailings as an exception to the ban on disposal of radioactive waste and provide a regulatory system. The referendum will be submitted to the electors at the general election in November 1982. If approved by the electors, Ch. 612, L. 1981, will become immediately effective.

Part 1

General Provisions

Part Compiler's Comments

Negotiation for Regional Disposal Facilities: HJR 42 (1981) directed the governor to negotiate an interstate compact with the state of Washington and other interested western states to provide for regional disposal facilities for low-level radioactive wastes.

75-3-101. Policy. It is the policy of the state of Montana, in furtherance of its responsibility to protect the public health and safety, to:

(1) institute and maintain a regulatory program for sources of ionizing radiation so as to provide, for compatibility with the standards and regulatory programs of the federal government, a single effective system of regulation within the state and a system consistent insofar as possible with those of other states; and

(2) institute and maintain a program to permit development and utilization of sources of ionizing radiation for peaceful purposes consistent with the health and safety of the public.

History: En. Sec. 1, Ch. 108, L. 1967; R.C.M. 1947, 69-5801.

75-3-102. Purpose. It is the purpose of this chapter to provide a program:

(1) of effective regulation of sources of ionizing radiation for the protection of the occupational and public health and safety;

(2) to promote an orderly regulatory pattern within the state, among the states, and between the federal government and the state and facilitate intergovernmental cooperation with respect to use and regulation of sources of ionizing radiation to the end that duplication of regulation may be minimized;

(3) to establish procedures for assumption and performance of certain regulatory responsibilities with respect to byproduct, source, and special nuclear materials; and

(4) to permit maximum utilization of sources of ionizing radiation consistent with the health and safety of the public.

History: En. Sec. 2, Ch. 108, L. 1967; R.C.M. 1947, 69-5802.

75-3-103. Definitions. The definitions used in this chapter are intended to be consistent with those used in 10 CFR 1-199 and 49 CFR 173.389-173.399. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Byproduct material" means:

(a) any radioactive material (except special nuclear material) yielded in, or made radioactive by exposure to the radiation incident to, the process of producing or utilizing special nuclear material; and

(b) the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content.

(2) "Department" means the department of health and environmental sciences.

(3) "Disposal" means burial in soil, release through the sanitary sewerage system, incineration, or permanent long-term storage with no intention of or provision for subsequent removal.

(4) "General license" means a license effective pursuant to rules promulgated by the department without the filing of an application to transfer, acquire, own, possess, or use quantities of or devices or equipment utilizing quantities of byproduct, source, special nuclear materials, or other radioactive material occurring naturally or produced artificially. General licenses are effective without the filing of applications with the department or the issuing of licensing documents to the user.

(5) "Ionizing radiation" means gamma rays and x-rays, alpha and beta particles, high-speed electrons, neutrons, protons, and other nuclear particles, but not sound or radio waves or visible, infrared, or ultraviolet light.

(6) "Large quantity radioactive material" is that quantity of radioactive material defined in 49 CFR 173.389(b).

(7) "Person" means an individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision or agency thereof, and any legal successor, representative, agent, or agency of the foregoing, other than the United States nuclear regulatory commission, any successor thereto, or federal agencies licensed by the nuclear regulatory commission.

(8) "Registration" means the registering with the department by the legal owner, user, or authorized representative of sources of ionizing radiation in the manner prescribed by rule.

(9) "Source material" means uranium, thorium, or any other material which the department or the United States nuclear regulatory commission declares by order to be source material or ores containing one or more of the foregoing materials in such concentration as the department or the nuclear regulatory commission declares by order to be source material after the nuclear regulatory commission has determined the material in such concentration to be source material.

(10) "Special nuclear material" means plutonium, uranium 233, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the department or the United States nuclear regulatory commission or any successor thereto declares by order to be special nuclear material or any material artificially enriched by any of the foregoing but does not include source material.

(11) "Specific license" means a license issued after application to use, manufacture, produce, transfer, receive, acquire, own, or possess quantities of or devices or equipment utilizing quantities of byproduct, special nuclear materials, or other radioactive material occurring naturally or produced artificially.

History: En. Sec. 3, Ch. 108, L. 1967; amd. Sec. 104, Ch. 349, L. 1974; amd. Sec. 16, Ch. 140, L. 1977; R.C.M. 1947, 69-5803; amd. Sec. 1, Ch. 68, L. 1979; amd. Sec. 2, I.M. No. 84, approved Nov. 4, 1980.

Compiler's Comments

1980 Amendment by Initiative 84: In subsection (1), substituted "(1) any" for "a" before "radioactive material", added "and (2) . . . content", and made minor changes in punctuation.

Severability: Section 5 of Initiative No. 84, approved by the electors of Montana on November 4, 1980, was a severability clause.

Effective Date: Section 7 of Initiative No. 84, approved by the electors of Montana on November 4, 1980, provided: "This Act shall become effective December 1, 1980."

75-3-104. Exemptions — sources, diagnosis, and therapy. (1) This chapter does not apply to the following sources or conditions:

(a) electrical equipment that is not intended primarily to produce radiation and that, by nature of design, does not produce radiation at the point of nearest approach at a weekly rate higher than one-tenth the appropriate limit for any critical organ exposed. The production testing or production servicing of such equipment is not exempt.

(b) radiation machines during process of manufacture or in storage or transit;

(c) any radioactive material while being transported in conformity with regulations adopted by the nuclear regulatory commission or any successor thereto or the interstate commerce commission and specifically applicable to the transportation of such radioactive materials.

(2) No exemptions under this section are granted for those quantities or types of activities that do not comply with the established rules promulgated by the nuclear regulatory commission or by any successor thereto.

(3) The provisions of this chapter may not be construed to limit the kind or amount of radiation that may be intentionally applied to a person for

diagnostic or therapeutic purposes by or under the direction of a licensed practitioner of the healing arts.

History: (1), (2)En. Sec. 15, Ch. 108, L. 1967; Sec. 69-5815, R.C.M. 1947; (3)En. Sec. 8, Ch. 108, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; Sec. 69-5808, R.C.M. 1947; R.C.M. 1947, 69-5808(4), 69-5815; amd. Sec. 2, Ch. 68, L. 1979.

75-3-105. Conflicting laws. Ordinances, resolutions, or regulations now or hereafter in effect of the governing body of a municipality or county relating to byproduct, source, and special nuclear materials shall not be superseded by this chapter, provided that such ordinances or regulations are and shall continue to be consistent with the provisions of this chapter, amendments thereto, and rules thereunder.

History: En. Sec. 11, Ch. 108, L. 1967; R.C.M. 1947, 69-5811.

75-3-106. Confidentiality — trade secrets. A report of investigation or inspection or processes obtained under this chapter shall not be disclosed or opened to public inspection except as may be necessary for the performance of the functions of the department.

History: En. Sec. 6, Ch. 108, L. 1967; amd. Sec. 107, Ch. 349, L. 1975; amd. Sec. 17, Ch. 140, L. 1977; R.C.M. 1947, 69-5806(8).

75-3-107. Inspections. The department or its duly authorized representatives shall have the power to enter at all reasonable times upon any private or public property within the jurisdiction of the department, other than a private dwelling, for the purpose of determining whether or not there is compliance with or violation of the provisions of this chapter and rules promulgated thereunder, and the owner, occupant, or person in charge of such property shall permit such entry and inspection. Entry into areas under the jurisdiction of the federal government shall be effected only with the concurrence of the federal government or its duly designated representative.

History: En. Sec. 7, Ch. 108, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5807.

75-3-108. Inspection agreements and training programs. (1) The department, on behalf of the state, may enter into an agreement or agreements with the federal government, other states, or interstate agencies whereby this state shall perform, on a cooperative basis with the federal government, other states, or interstate agencies, inspections or other functions relating to control of sources of ionizing radiation.

(2) The department and any other appropriate state agency may institute training programs for the purpose of qualifying personnel to carry out the provisions of this chapter and may make said personnel available for participation in any program or programs of the federal government, other states, or interstate agencies in furtherance of the purposes of this chapter.

History: En. Sec. 10, Ch. 108, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5810.

Part 2

Control of Radioactive Substances

75-3-201. State radiation control agency. (1) The department is the state radiation control agency.

(2) Under the laws of this state, the department may employ, compensate, and prescribe the powers and duties of the individuals which are necessary to carry out this chapter.

(3) The department may for the protection of the occupational and public health and safety:

(a) develop and conduct programs for evaluation and control of hazards associated with the use of sources of ionizing radiation;

(b) develop programs and adopt rules with due regard for compatibility with federal programs for licensing and regulation of byproduct, source, radioactive waste, and special nuclear materials and other radioactive materials. These rules shall cover equipment and facilities, methods for transporting, handling, and storage of radioactive materials, permissible levels of exposure, technical qualifications of personnel, required notification of accidents and other incidents involving radioactive materials, survey methods and results, methods of disposal of radioactive materials, posting and labeling of areas and sources, and methods and effectiveness of controlling individuals in posted and restricted areas.

(c) adopt rules relating to control of other sources of ionizing radiation. These rules shall cover equipment and facilities, permissible levels of exposure to personnel, posting of areas, surveys, and records.

(d) advise, consult, and cooperate with other agencies of the state, the federal government, other states, interstate agencies, political subdivisions, and groups concerned with control of sources of ionizing radiation;

(e) accept and administer loans, grants, or other funds or gifts, conditional or otherwise, in furtherance of its functions, from the federal government and from other sources, public or private;

(f) encourage, participate in, or conduct studies, investigations, training, research, and demonstrations relating to control of sources of ionizing radiation;

(g) collect and disseminate information relating to control of sources of ionizing radiation, including:

(i) maintenance of a file of all license applications, issuances, denials, amendments, transfers, renewals, modifications, suspensions, and revocations;

(ii) maintenance of a file of registrants possessing sources of ionizing radiation requiring registration under this chapter and any administrative or judicial action pertaining thereto;

(iii) maintenance of a file of all rules relating to regulation of sources of ionizing radiation, pending or adopted, and proceedings thereon.

History: En. Sec. 4, Ch. 108, L. 1967; amd. Sec. 83, Ch. 349, L. 1974; R.C.M. 1947, 69-5804.

75-3-202. Licensing and registration. (1) The department shall provide by rule for general or specific licensing of persons to receive, possess, or transfer radioactive materials and devices or equipment utilizing such materials. The rules shall provide for amendment, suspension, or revocation of licenses pursuant to 75-3-401 and 75-3-403.

(2) Each application for a specific license shall be in writing and shall state such information as the department by rule may determine to be necessary to decide the technical, insurance, and financial qualifications or any other qualification of the applicant as the department considers reasonable and necessary to protect the occupational and public health and safety. The

department may, at any time after the filing of the application and before the expiration of the license, require further written statements and may make such inspections as the department considers necessary in order to determine whether the license should be granted, denied, modified, suspended, or revoked. All applications and statements shall be signed by the applicant or licensee. The department may require an application or statement to be made under oath or affirmation.

(3) Each license shall be in such form and contain such terms and conditions as the department may by rule prescribe.

(4) No license issued pursuant to the provisions of this chapter and no right to possess or utilize sources of ionizing radiation granted by any license may be assigned or in any manner disposed of.

(5) The terms and conditions of all licenses shall be subject to amendment, revision, or modification by rules or orders issued in accordance with the provisions of this chapter.

(6) The department may require registration and inspection of persons dealing with sources of ionizing radiation which do not require a specific license and may require compliance with specific safety standards to be promulgated by the department.

(7) The department is authorized to exempt certain users from the licensing or registration requirements set forth in this section when the department makes a finding that the exemption of the users will not constitute a significant risk to the health and safety of the public.

(8) Rules promulgated pursuant to this chapter may provide for recognition of such other state or federal licenses as the department considers desirable, subject to such registration requirements as the department prescribes.

History: En. Sec. 6, Ch. 108, L. 1967; amd. Sec. 107, Ch. 349, L. 1975; amd. Sec. 17, Ch. 140, L. 1977; R.C.M. 1947, 69-5806(1) thru (7), (9).

75-3-203. Federal-state agreements. (1) The governor, on behalf of this state, is authorized to enter into agreements with the federal government providing for discontinuance of certain of the federal government's responsibilities with respect to sources of ionizing radiation and the assumption thereof by this state.

(2) Any person who, on the effective date of an agreement under subsection (1) of this section, possesses a license issued by the federal government shall be deemed to possess the same pursuant to this chapter, which shall expire either 90 days after receipt from the department of a notice of expiration of such license or on the date of expiration specified in the federal license, whichever is earlier.

History: En. Sec. 9, Ch. 108, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5809.

75-3-204. Records. (1) The department shall require each person who acquires, possesses, or uses a source of ionizing radiation to maintain records relating to its receipt, storage, transfer, or disposal and such other records as the department may require, subject to such exemptions as may be provided by rules.

(2) The department shall require each person who acquires, possesses, or uses a source of ionizing radiation to maintain appropriate records showing the radiation exposure of all individuals for whom personnel monitoring is

required by rules of the department. Copies of these records and those required to be kept by subsection (1) of this section shall be submitted to the department on request.

(3) The department shall adopt reasonable regulations, compatible with those of the United States nuclear regulatory commission or the national committee on radiation protection, pertaining to reports of exposure of personnel to radiation. The regulations shall require that reports of excessive exposure be made to the individual exposed and to the department and shall make provision for periodic and terminal reports to individuals for whom personnel monitoring is required.

History: **En. Sec. 8, Ch. 108, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5808(1) thru (3); amd. Sec. 3, Ch. 68, L. 1979.**

Part 3

Disposal of Large Quantities of Radioactive Material

75-3-301. Definition. Notwithstanding the definition in 75-3-103, as used in this part "person" means any individual, group, firm, partnership, corporation, cooperative, association, government subdivision, government agency, local government, or other organization or entity.

History: **En. 69-5817 by Sec. 1, Ch. 68, L. 1977; R.C.M. 1947, 69-5817; amd. Sec. 4, Ch. 68, L. 1979.**

75-3-302. Disposal of large quantities of radioactive material prohibited — exceptions and exclusion. (1) No person may dispose of large quantity radioactive material, byproduct material, or special nuclear material within the state of Montana.

(2) Byproduct material (except large quantity radioactive material) possessed, used, and transported for educational purposes, scientific research and development, medical research, diagnosis, and treatment, geophysical surveying, and similar uses licensed by the United States nuclear regulatory commission shall be excepted from this part, provided that such material is being or has been lawfully disposed of within Montana upon the effective date of this Act.

(3) Nothing in this part precludes the construction of a nuclear facility approved under the requirements of the Montana Major Facility Siting Act, or the mining of any raw ore, provided that such activity is not inconsistent with this part.

History: **En. 69-5818, 69-5819, 69-5821 by Secs. 2, 3, 5, Ch. 68, L. 1977; R.C.M. 1947, 69-5818, 69-5819, 69-5821; amd. Sec. 3, I.M. No. 84, approved Nov. 4, 1980.**

Compiler's Comments

1980 Amendment by Initiative 84: In subsection (1), deleted "in Montana" after "dispose of", and substituted "byproduct material, or special nuclear material within the state of Montana" for "produced in other states"; in subsection (2), inserted "(except large quantity radioactive material)", substituted "similar uses" for "other purposes" before "licensed by", and substituted "provided that . . . of this Act" for "during the period of possession use, and transportation prior to disposal"; and in subsection (3), added "or the mining . . . with this part".

Severability: Section 5 of Initiative No. 84, approved by the electors of Montana on November 4, 1980, was a severability clause.

Effective Date: Section 7 of Initiative No. 84, approved by the electors of Montana on November 4, 1980, provided: "This Act shall become effective December 1, 1980."

75-3-303. Penalty. A person who knowingly or purposely disposes of large quantity radioactive material, byproduct material, or special nuclear material within Montana shall be fined an amount not more than $5,000 or be imprisoned for not more than two years, or both, for each offense. A person who negligently disposes of large quantity radioactive material, byproduct material, or special nuclear material within Montana shall be fined not more than $1,000 for each offense. In this part, each day of violation constitutes a separate offense.

History: En. 69-5820 by Sec. 4, Ch. 68, L. 1977; R.C.M. 1947, 69-5820; amd. Sec. 4, I.M. No. 84, approved Nov. 4, 1980.

Compiler's Comments

1980 Amendment by Initiative 84: Substituted the first two sentences for "A person convicted of violating this part is guilty of a misdemeanor and shall be fined an amount not less than $250 for each offense."

Severability: Section 5 of Initiative No. 84, approved by the electors of Montana on November 4, 1980, was a severability clause.

Effective Date: Section 7 of Initiative No. 84, approved by the electors of Montana on November 4, 1980, provided: "This Act shall become effective December 1, 1980."

75-3-304. Policy. It is the policy of the state of Montana, in furtherance of its responsibility to protect the public health and safety, under the police powers of the state and for protection of the constitutional right to a healthy environment, to prohibit the disposal of certain radioactive material.

History: En. Sec. 1, I.M. No. 84, approved Nov. 4, 1980.

Compiler's Comments

Codification: Section 6 of Initiative No. 84, approved by the electors of Montana on November 4, 1980, provided: "New section 1 [75-3-304] is intended to be codified as an integral part of Title 75, chapter 3, part 3, and the provisions contained in Title 75, chapter 3, part 3, apply to new section 1."

Effective Date: Section 7 of Initiative No. 84, approved by the electors of Montana on November 4, 1980, provided: "This Act shall become effective December 1, 1980."

Referendum on Disposal of Uranium Mill Tailings: Section 18, Ch. 612, L. 1981, is a referendum on whether or not the state should allow disposal in Montana of uranium mill tailings as an exception to the ban on disposal of radioactive waste and provide a regulatory system. The referendum will be submitted to the electors at the general election in November 1982. If approved by the electors, Ch. 612, L. 1981, will become immediately effective.

Part 4

Enforcement, Appeal, and Penalties

75-3-401. Administrative hearings. In a proceeding under this chapter for granting, suspending, revoking, or amending a license or for determining compliance with or granting exceptions from rules adopted under this chapter, the board of health and environmental sciences shall first afford an opportunity for a hearing on the record upon the request of a person whose interest may be affected by the proceeding and shall admit the person as a party to the proceeding.

History: En. Sec. 12, Ch. 108, L. 1967; amd. Sec. 84, Ch. 349, L. 1974; R.C.M. 1947, 69-5812(1).

75-3-402. Emergency impoundment of materials. The department shall have the authority in the event of an emergency to impound or order the impounding of sources of ionizing radiation in the possession of any person who is not equipped to observe or who fails to observe the provisions of this chapter or any rules promulgated hereunder.

History: En. Sec. 14, Ch. 108, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5814.

75-3-403. Emergency orders and rules. When the department finds that an emergency exists requiring immediate action to protect the public health and safety, the department may, without notice or hearing, issue a rule or order reciting the existence of the emergency and requiring that such action be taken as considered necessary to meet the emergency. Notwithstanding any provision of this chapter to the contrary, the rule or order is effective immediately. A person to whom the rule or order is directed shall comply with it immediately but on application to the board shall be afforded a prompt hearing. On the basis of the hearing the emergency rule or order shall be continued, modified, or revoked by the board within 30 days after the hearing or when the emergency no longer exists.

History: En. Sec. 12, Ch. 108, L. 1967; amd. Sec. 84, Ch. 349, L. 1974; R.C.M. 1947, 69-5812(2).

75-3-404. Prohibited activity. (1) No person shall acquire, own, possess, or use any radioactive byproduct material, source material, special nuclear materials, or other radioactive materials, occurring naturally or produced artificially, without having been granted a license therefor from the department or transfer to another or dispose of said materials without first having been granted approval of the department therefor in accordance with the administrative rules of the department.

(2) It shall be unlawful for any person to use, manufacture, produce, or knowingly transport, transfer, receive, acquire, own, or possess any source of ionizing radiation unless such person is licensed by or registered with the department in accordance with the provisions of this chapter and rules issued hereunder.

History: (1)En. Sec. 16, Ch. 108, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; Sec. 69-5816, R.C.M. 1947; (2)En. Sec. 13, Ch. 108, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; Sec. 69-5813, R.C.M. 1947; R.C.M. 1947, 69-5813, 69-5816(part).

75-3-405. Penalty. A person who violates 75-3-404 is guilty of a misdemeanor punishable by a fine of not less than $100 and not more than $1,000 or by confinement in the county jail of not less than 30 days and not more than 90 days or by both.

History: En. Sec. 16, Ch. 108, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5816(part); amd. Sec. 5, Ch. 68, L. 1979.

CHAPTER 4

RESERVED

CHAPTER 5

WATER QUALITY

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Part 1

General Provisions

75-5-101. Policy. It is the public policy of this state to:

(1) conserve water by protecting, maintaining, and improving the quality and potability of water for public water supplies, wildlife, fish and aquatic life, agriculture, industry, recreation, and other beneficial uses;

(2) provide a comprehensive program for the prevention, abatement, and control of water pollution.

History: En. Sec. 121, Ch. 197, L. 1967; amd. Sec. 1, Ch. 21, L. 1971; amd. Sec. 1, Ch. 455, L. 1975; R.C.M. 1947, 69-4801(1).

75-5-102. Purpose — rights of action not abridged. (1) A purpose of this chapter is to provide additional and cumulative remedies to prevent, abate, and control the pollution of state waters.

(2) This chapter does not abridge or alter rights of action or remedies in equity or under the common law or statutory law, criminal or civil, nor does this chapter or an act done under it estop the state or a municipality or person, as owner of water rights or otherwise, in the exercise of his rights in equity or under the common law or statutory law to suppress nuisances or to abate pollution.

History: En. Sec. 17, Ch. 21, L. 1971; amd. Sec. 6, Ch. 506, L. 1973; amd. Sec. 67, Ch. 349, L. 1974; amd. Sec. 11, Ch. 455, L. 1975; R.C.M. 1947, 69-4823(4).

75-5-103. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Sewage" means water-carried waste products from residences, public buildings, institutions, or other buildings, including discharge from human beings or animals, together with groundwater infiltration and surface water present.

(2) "Industrial waste" means any waste substance from the process of business or industry or from the development of any natural resource, together with any sewage that may be present.

(3) "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.

(4) "Contamination" means impairment of the quality of state waters by sewage, industrial wastes, or other wastes, creating a hazard to human health.

(5) "Pollution" means contamination or other alteration of the physical, chemical, or biological properties of any state waters which exceeds that permitted by Montana water quality standards, including but not limited to standards relating to change in temperature, taste, color, turbidity, or odor; or the discharge, seepage, drainage, infiltration, or flow of any liquid, gaseous, solid, radioactive, or other substance into any state water which will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, welfare, livestock, wild animals, birds, fish, or other wildlife. A discharge, seepage, drainage, infiltration or flow which is authorized under the pollution discharge permit rules of the board is not pollution under this chapter.

(6) "Sewage system" means a device for collecting or conducting sewage, industrial wastes, or other wastes to an ultimate disposal point.

(7) "Treatment works" means works installed for treating or holding sewage, industrial wastes, or other wastes.

(8) "Disposal system" means a system for disposing of sewage, industrial, or other wastes and includes sewage systems and treatment works.

(9) "State waters" means any body of water, irrigation system, or drainage system, either surface or underground; however, this subsection does not apply to irrigation waters where the waters are used up within the irrigation system and the waters are not returned to any other state waters.

(10) "Person" means the state, a political subdivision of the state, institution, firm, corporation, partnership, individual, or other entity and includes persons resident in Canada.

(11) "Council" means the water pollution control advisory council provided for in 2-15-2107.

(12) "Board" means the board of health and environmental sciences provided for in 2-15-2104.

(13) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(14) "Local department of health" means the staff, including health officers, employed by a county, city, city-county, or district board of health.

(15) "Point source" means any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or other floating craft, from which pollutants are or may be discharged.

(16) "Owner or operator" means any person who owns, leases, operates, controls, or supervises a point source.

(17) "Standard of performance" means a standard adopted by the board for the control of the discharge of pollutants which reflects the greatest degree of effluent reduction achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, where practicable, a standard permitting no discharge of pollutants.

(18) "Effluent standard" means any restriction or prohibition on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged into state waters.

History: En. Sec. 122, Ch. 197, L. 1967; amd. Sec. 2, Ch. 21, L. 1971; amd. Sec. 1, Ch. 506, L. 1973; amd. Sec. 59, Ch. 349, L. 1974; amd. Sec. 2, Ch. 455, L. 1975; amd. Sec. 3, Ch. 308, L. 1977; amd. Sec. 1, Ch. 444, L. 1977; R.C.M. 1947, 69-4802.

75-5-104. Special applicability. This chapter applies to drainage or seepage from all sources, including that from artificial, privately owned ponds or lagoons, if such drainage or seepage may reach other state waters in a condition which may pollute the other state waters.

History: En. Sec. 124, Ch. 197, L. 1967; amd. Sec. 3, Ch. 21, L. 1971; R.C.M. 1947, 69-4804.

75-5-105. Confidentiality of records. Any information concerning sources of pollution which is furnished to the board or department or which is obtained by either of them is a matter of public record and open to public use. However, any information unique to the owner or operator of a source of pollution which would, if disclosed, reveal methods or processes entitled to protection as trade secrets shall be maintained as confidential if so determined by a court of competent jurisdiction. The owner or operator shall file a declaratory judgment action to establish the existence of a trade secret if he wishes such information to enjoy confidential status. The department shall be served in any such action and may intervene as a party therein. Any information not intended to be public when submitted to the board or department shall be submitted in writing and clearly marked as confidential. The data describing physical and chemical characteristics of a waste discharged to state waters shall not be considered confidential. The board may use any information in compiling or publishing analyses or summaries relating to water pollution if such analyses or summaries do not identify any owner or operator of a source of pollution or reveal any information which is otherwise made confidential by this section.

History: En. Sec. 16, Ch. 21, L. 1971; amd. Sec. 10, Ch. 455, L. 1975; R.C.M. 1947, 69-4822.

75-5-106. Interagency cooperation. The council, board, and department may require the use of records of all state agencies and may seek the assistance of such agencies. State, county, and municipal officers and employees, including sanitarians and other employees of local departments of health, shall cooperate with the council, board, and department in furthering the purposes of this chapter, so far as is practicable and consistent with their other duties.

History: En. Sec. 21, Ch. 21, L. 1971; R.C.M. 1947, 69-4827.

Part 2

Administrative Agencies

75-5-201. Board rules authorized. The board shall adopt rules for the administration of this chapter.

History: En. Sec. 6, Ch. 21, L. 1971; amd. Sec. 2, Ch. 506, L. 1973; amd. Sec. 62, Ch. 349, L. 1974; amd. Sec. 5, Ch. 455, L. 1975; amd. Sec. 3, Ch. 444, L. 1977; R.C.M. 1947, 69-4808.2(1)(g).

75-5-202. Board hearings. The board shall hold hearings necessary for the proper administration of this chapter or, in the case of permit issuance hearings, delegate this function to the department.

History: En. Sec. 6, Ch. 21, L. 1971; amd. Sec. 2, Ch. 506, L. 1973; amd. Sec. 62, Ch. 349, L. 1974; amd. Sec. 5, Ch. 455, L. 1975; amd. Sec. 3, Ch. 444, L. 1977; R.C.M. 1947, 69-4808.2(1)(f).

75-5-203 through 75-5-210 reserved.

75-5-211. Department to administer chapter. (1) Except as otherwise provided, the department is responsible for administration of this chapter.

(2) The department may use its personnel and those of the local departments of health as necessary to administer this chapter.

History: En. Sec. 125, Ch. 197, L. 1967; amd. Sec. 4, Ch. 21, L. 1971; amd. Sec. 60, Ch. 349, L. 1974; R.C.M. 1947, 69-4805.

75-5-212. Department research and information. The department shall:

(1) collect and furnish information relating to the prevention and control of water pollution;

(2) conduct or encourage necessary research and demonstrations concerning water pollution.

History: En. Sec. 7, Ch. 21, L. 1971; amd. Sec. 3, Ch. 506, L. 1973; amd. Sec. 63, Ch. 349, L. 1974; amd. Sec. 6, Ch. 455, L. 1975; amd. Sec. 4, Ch. 444, L. 1977; R.C.M. 1947, 69-4809.1(1)(d), (1)(e).

75-5-213. Comprehensive plan for prevention and control of water pollution. The department shall advise, consult, and cooperate with other states, other state and federal agencies, affected groups, political subdivisions, and industries in the formulation of a comprehensive plan to prevent and control pollution.

History: En. Sec. 7, Ch. 21, L. 1971; amd. Sec. 3, Ch. 506, L. 1973; amd. Sec. 63, Ch. 349, L. 1974; amd. Sec. 6, Ch. 455, L. 1975; amd. Sec. 4, Ch. 444, L. 1977; R.C.M. 1947, 69-4809.1(1)(h).

75-5-214 through 75-5-220 reserved.

75-5-221. Water pollution control advisory council — general. (1) The council provided for in 2-15-2107 shall select a chairman from among its members. The director of health and environmental sciences shall designate a member of the staff of the department to act as secretary to the council. The secretary shall keep records of all actions taken by the council.

(2) It shall hold at least two regular meetings each calendar year. Special meetings shall be held at the call of the chairman or on written request of two or more members.

(3) Each member may, by filing with the secretary, designate a deputy or alternate to perform his duties.

(4) The council shall act only in an advisory capacity to the department on matters relating to water pollution.

History: En. Sec. 132, Ch. 197, L. 1967; amd. Sec. 10, Ch. 21, L. 1971; amd. Sec. 64, Ch. 349, L. 1974; R.C.M. 1947, 69-4812.

Part 3

Classification and Standards

75-5-301. Classification and standards for state waters. The board shall:

(1) establish and modify the classification of all waters in accordance with their present and future most beneficial uses;

(2) formulate standards of water purity and classification of water according to its most beneficial uses, giving consideration to the economics of waste treatment and prevention;

(3) review, from time to time at intervals of not more than 3 years, established classifications of waters and standards of water purity and classification.

History: En. Sec. 6, Ch. 21, L. 1971; amd. Sec. 2, Ch. 506, L. 1973; amd. Sec. 62, Ch. 349, L. 1974; amd. Sec. 5, Ch. 455, L. 1975; amd. Sec. 3, Ch. 444, L. 1977; R.C.M. 1947, 69-4808.2(part).

75-5-302. Revised classifications not to lower water quality standards — exception. In revising classifications or standards or in adopting new classifications or standards, the board may not so formulate standards of water purity or classify any state water as to lower any water quality standard applicable to any state water below the level applicable under the classifications and standards adopted except upon a finding that a particular state water has been classified under a standard or classification of water quality that is higher than the actual water quality that existed at the time of classification and only if the action is taken pursuant to 75-5-307.

History: En. Sec. 6, Ch. 21, L. 1971; amd. Sec. 2, Ch. 506, L. 1973; amd. Sec. 62, Ch. 349, L. 1974; amd. Sec. 5, Ch. 455, L. 1975; amd. Sec. 3, Ch. 444, L. 1977; R.C.M. 1947, 69-4808.2(1)(c)(i).

75-5-303. Nondegradation policy. The board shall require:

(1) that any state waters whose existing quality is higher than the established water quality standards be maintained at that high quality unless it has been affirmatively demonstrated to the board that a change is justifiable as a result of necessary economic or social development and will not preclude present and anticipated use of these waters; and

(2) any industrial, public, or private project or development which would constitute a new source of pollution or an increased source of pollution to high-quality waters, referred to in subsection (1), to provide the degree of waste treatment necessary to maintain that existing high water quality.

History: En. Sec. 6, Ch. 21, L. 1971; amd. Sec. 2, Ch. 506, L. 1973; amd. Sec. 62, Ch. 349, L. 1974; amd. Sec. 5, Ch. 455, L. 1975; amd. Sec. 3, Ch. 444, L. 1977; R.C.M. 1947, 69-4808.2(1)(c)(ii), (1)(c)(iii).

75-5-304. Adoption of standards — pretreatment, effluent, performance. The board shall adopt pretreatment standards for wastewater discharged into a municipal disposal system, adopt effluent standards as defined in 75-5-103, adopt toxic effluent standards and prohibitions, and establish standards of performance for new point source discharges.

History: En. Sec. 6, Ch. 21, L. 1971; amd. Sec. 2, Ch. 506, L. 1973; amd. Sec. 62, Ch. 349, L. 1974; amd. Sec. 5, Ch. 455, L. 1975; amd. Sec. 3, Ch. 444, L. 1977; R.C.M. 1947, 69-4808.2(1)(h).

75-5-305. Adoption of requirements for treatment of wastes. The board may establish minimum requirements for the treatment of wastes.

History: En. Sec. 6, Ch. 21, L. 1971; amd. Sec. 2, Ch. 506, L. 1973; amd. Sec. 62, Ch. 349, L. 1974; amd. Sec. 5, Ch. 455, L. 1975; amd. Sec. 3, Ch. 444, L. 1977; R.C.M. 1947, 69-4808.2(2)(b).

75-5-306. Purer than natural unnecessary — dams. (1) It is not necessary that wastes be treated to a purer condition than the natural condition of the receiving stream as long as the minimum treatment requirements established under this chapter are met.

(2) "Natural" refers to conditions or material present from runoff or percolation over which man has no control or from developed land where all reasonable land, soil, and water conservation practices have been applied. Conditions resulting from the reasonable operation of dams at July 1, 1971, are natural.

History: En. Sec. 121, Ch. 197, L. 1967; amd. Sec. 1, Ch. 21, L. 1971; amd. Sec. 1, Ch. 455, L. 1975; R.C.M. 1947, 69-4801(2).

75-5-307. Hearings required for classification, formulation of standards, and rulemaking. (1) Before streams are classified or standards established or modified or rules made, revoked, or modified, the board shall hold a public hearing. Notice of the hearing specifying the waters concerned and the classification, standards, or modification of them and any rules proposed to be made, revoked, or modified shall be published at least once a week for 3 consecutive weeks in a daily newspaper of general circulation in the area affected. Notice shall also be mailed directly to persons the board believes may be affected by the proposed action. The council shall be given not less than 30 days prior to first publication to comment on the proposed action.

(2) At a hearing held under this section, the board shall give all interested persons reasonable opportunity to submit data, views, or arguments, orally or in writing. The board may make rules for the orderly conduct of the hearing but need not require compliance with the rules of evidence or procedure applicable to hearings held under 75-5-611.

History: En. Sec. 134, Ch. 197, L. 1967; amd. Sec. 12, Ch. 21, L. 1971; R.C.M. 1947, 69-4814.

Part 4

Permits

75-5-401. Board rules for permits. (1) The board shall adopt rules:

(a) governing application for permits to discharge sewage, industrial wastes, or other wastes into state waters, including rules requiring the filing of plans and specifications relating to the construction, modification, or operation of disposal systems;

(b) governing the issuance, denial, modification, or revocation of permits.

(2) The rules shall allow the issuance or continuance of a permit only if the department finds that operation consistent with the limitations of the permit will not result in pollution of any state waters, except that the rules may allow the issuance of a temporary permit under which pollution may result if the department insures that such permit contains a compliance schedule designed to meet all applicable effluent standards and water quality standards in the shortest reasonable period of time.

(3) The rules shall provide that the department may revoke a permit if the department finds that the holder of the permit has violated its terms, unless the department also finds that the violation was accidental and unforeseeable and that the holder of the permit corrected the condition resulting in the violation as soon as was reasonably possible.

History: En. Sec. 6, Ch. 21, L. 1971; amd. Sec. 2, Ch. 506, L. 1973; amd. Sec. 62, Ch. 349, L. 1974; amd. Sec. 5, Ch. 455, L. 1975; amd. Sec. 3, Ch. 444, L. 1977; R.C.M. 1947, 69-4808.2(1)(d), (1)(e).

75-5-402. Duties of department. The department shall:

(1) issue, suspend, revoke, modify, or deny permits to discharge sewage, industrial wastes, or other wastes into state waters, consistently with rules made by the board;

(2) examine plans and other information needed to determine whether a permit should be issued or suggest changes in plans as a condition to the issuance of a permit;

(3) clearly specify in any permit any limitations imposed as to the volume, strength, and other significant characteristics of the waste to be discharged.

History: En. Sec. 7, Ch. 21, L. 1971; amd. Sec. 3, Ch. 506, L. 1973; amd. Sec. 63, Ch. 349, L. 1974; amd. Sec. 6, Ch. 455, L. 1975; amd. Sec. 4, Ch. 444, L. 1977; R.C.M. 1947, 69-4809.1(1)(a) thru (1)(c).

75-5-403. Denial or modification of permit. (1) If the department denies an application for a permit or modifies a permit, the department shall give written notice of its action to the applicant or holder and he may request a hearing before the board, in the manner stated in 75-5-611, for the purpose of petitioning the board to reverse or modify the action of the department. Such hearing shall be held within 30 days after receipt of written request. After the hearing, the board shall affirm, modify, or reverse the action of the department. If the holder does not request a hearing before the board, modification of a permit shall be effective 30 days after receipt of notice by the holder unless the department specifies a later date. If the holder does request a hearing before the board, no order modifying his permit shall be effective until 20 days after he has received notice of the action of the board.

(2) This section does not apply to any modification made in permit conditions at the time of reissuance, but only to those modifications made in existing permits during their terms.

History: En. Sec. 14, Ch. 21, L. 1971; amd. Sec. 4, Ch. 455, L. 1975; R.C.M. 1947, 69-4807.1(1).

75-5-404. Suspension or revocation of permit — procedure. If the department suspends or revokes a permit because it has reason to believe that the holder has violated this chapter, the department may specify that the suspension or revocation is effective immediately if the department finds that the violation is likely to continue and will cause pollution, the harmful effects of which will not be remedied immediately on the cessation of the violation. Upon petition by the holder of the permit, the board shall grant the holder a hearing, to be conducted in the manner specified in 75-5-611, and shall issue an order affirming, modifying, or reversing the action of the department. The order of the board shall be effective immediately unless the board directs otherwise.

History: En. Sec. 14, Ch. 21, L. 1971; amd. Sec. 4, Ch. 455, L. 1975; R.C.M. 1947, 69-4807.1(2).

Part 5

Financial Provisions

75-5-501. Board to control state matching funds for construction of water pollution control facilities. (1) The board shall control funds appropriated by the state for the purpose of providing matching funds to local governments for the construction of water pollution control facilities.

(2) The board shall adopt rules and establish standards for the use of such matching funds by local governments in the planning and construction of local water pollution control facilities.

(3) Funds appropriated under this section shall be used only to provide an increase in the aid from the federal government not otherwise obtainable and may not exceed 25% of the total cost of the project as participated in by the federal water pollution control administration.

History: En. Sec. 1, Ch. 165, L. 1969; amd. Sec. 61, Ch. 349, L. 1974; R.C.M. 1947, 69-4808.1.

75-5-502. Board authorized to accept loans and grants. The board may accept loans and grants from the federal government and other sources to carry out the provisions of this chapter.

History: En. Sec. 6, Ch. 21, L. 1971; amd. Sec. 2, Ch. 506, L. 1973; amd. Sec. 62, Ch. 349, L. 1974; amd. Sec. 5, Ch. 455, L. 1975; amd. Sec. 3, Ch. 444, L. 1977; R.C.M. 1947, 69-4808.2(2)(a).

75-5-503. Department authorized to accept loans and grants. The department may accept loans and grants from the federal government and other sources to carry out the provisions of this chapter.

History: En. Sec. 7, Ch. 21, L. 1971; amd. Sec. 3, Ch. 506, L. 1973; amd. Sec. 63, Ch. 349, L. 1974; amd. Sec. 6, Ch. 455, L. 1975; amd. Sec. 4, Ch. 444, L. 1977; R.C.M. 1947, 69-4809.1(2).

75-5-504 through 75-5-510 reserved.

75-5-511. Sewage system operators authorized to adopt charges and rates for users. (1) A municipality or other entity operating a sewage system may adopt a system of charges and rates to assure that each recipient of treatment works services within the municipality's jurisdiction or service area will pay its proportionate share of the costs of operation, maintenance, and replacement of any treatment works facilities or services provided by the municipality or other entity.

(2) A municipality or other entity operating a sewage system may require industrial users of its treatment works to pay to the municipality or other entity that portion of the cost of construction of the treatment works which is allocable to the treatment of such industrial user's wastes. The department may determine whether the payment required of the industrial user for the portion of the cost of the construction of the treatment works is properly allocable to the treatment of the industrial user's wastes.

History: En. Sec. 14, Ch. 455, L. 1975; R.C.M. 1947, 69-4808.4(1), (2).

75-5-512. Uses allowed for revenues. A municipality or other entity operating a sewage system may retain the amounts of the revenues derived from the payment of costs by industrial users of its treatment works services and expend such revenues, together with interest thereon, for:

(1) repayment to applicable agencies of government of any grants or loans made to the municipality or other entity operating a sewage system for construction of the treatment works;

(2) future expansion and reconstruction of the treatment works; and

(3) other municipal purposes.

History: En. Sec. 14, Ch. 455, L. 1975; R.C.M. 1947, 69-4808.4(3).

75-5-513. Sewage system operators to keep records — department's power to inspect and audit. A municipality or other entity operating sewage systems shall keep records, financial statements, and books regarding its rates and charges and amounts collected on account of its treatment works and how such revenues are allocated. The department may inspect such records, financial statements, and books, audit them or cause them to be audited at such intervals as deemed necessary.

History: **En. Sec. 14, Ch. 455, L. 1975; R.C.M. 1947, 69-4808.4(4).**

75-5-514. When board to establish rates and collect charges. (1) In the event a municipality or other entity operating sewage systems fails, neglects, or refuses when required by the department to adopt the system of charges and rates authorized by 75-5-511, the board may adopt a system of charges and rates as provided for in 75-5-511(1) and collect, administer, and apply such revenues for the purposes of 75-5-512.

(2) In lieu of proceeding in the manner set forth in subsection (1) of this section, the department may institute proceedings at law or in equity to enforce compliance with or restrain violations of 75-5-511 through 75-5-513.

History: **En. Sec. 14, Ch. 455, L. 1975; R.C.M. 1947, 69-4808.4(5), (6).**

75-5-515. Determination of costs payable by users. In determining the amount of treatment works costs to be paid by recipients of treatment works services, the municipality or other entity operating sewage systems or, if applicable, the board shall consider the strength, volume, types, and delivery flow rate characteristics of the waste; the nature, location, and type of treatment works; the receiving waters; and such other factors as deemed necessary.

History: **En. 69-4808.5 by Sec. 15, Ch. 455, L. 1975; R.C.M. 1947, 69-4808.5.**

Part 6

Enforcement, Appeal, and Penalties

75-5-601. Clean-up orders. The department shall issue orders to any person to clean up any material which he or his employee, agent, or subcontractor has accidentally or purposely dumped, spilled, or otherwise deposited in or near state waters and which may pollute them.

History: **En. Sec. 7, Ch. 21, L. 1971; amd. Sec. 3, Ch. 506, L. 1973; amd. Sec. 63, Ch. 349, L. 1974; amd. Sec. 6, Ch. 455, L. 1975; amd. Sec. 4, Ch. 444, L. 1977; R.C.M. 1947, 69-4809.1(1)(f).**

75-5-602. Power to require monitoring. In order to carry out the objectives of this chapter and to effectively monitor the discharge of sewage, industrial wastes, and other wastes into state waters, the department may require the owner or operator of any point source, or the owner or operator of any facility that discharges into a municipal sewage system and to which pretreatment standards promulgated under this chapter apply, to:

(1) establish and maintain records;

(2) make reports;

(3) install, use, and maintain monitoring equipment or methods, including biological monitoring techniques;

(4) sample effluents using specified monitoring methods at designated locations and intervals;

(5) provide other information as may be reasonably required by the department.

History: En. 69-4809.2 by Sec. 4, Ch. 506, L. 1973; amd. Sec. 7, Ch. 455, L. 1975; R.C.M. 1947, 69-4809.2(1).

75-5-603. Power to inspect. The authorized representative of the department, upon presentation of his credentials, may at reasonable times enter upon any public or private property to:

(1) investigate conditions relating to pollution of state waters or violations of permit conditions;

(2) have access to and copy any records required under this chapter;

(3) inspect any monitoring equipment or method required under 75-5-602(3); and

(4) sample any effluents which the owner or operator of such source is required to sample under 75-5-602(4).

History: En. 69-4809.2 by Sec. 4, Ch. 506, L. 1973; amd. Sec. 7, Ch. 455, L. 1975; R.C.M. 1947, 69-4809.2(2).

75-5-604. Information obtained to relate to standards. Any records, reports, or information obtained under 75-5-602 and 75-5-603 shall, in the case of effluent data, be related to any applicable effluent limitations, toxic, pretreatment, or new source performance standards.

History: En. 69-4809.2 by Sec. 4, Ch. 506, L. 1973; amd. Sec. 7, Ch. 455, L. 1975; R.C.M. 1947, 69-4809.2(3).

75-5-605. Prohibited activity. (1) It is unlawful to:

(a) cause pollution as defined in 75-5-103 of any state waters or to place or cause to be placed any wastes in a location where they are likely to cause pollution of any state waters;

(b) violate any provision set forth in a permit or stipulation, including but not limited to limitations and conditions contained therein;

(c) violate any order issued pursuant to this chapter; or

(d) violate any provision of this chapter.

(2) It is unlawful to carry on any of the following activities without a current permit from the department:

(a) construct, modify, or operate a disposal system which discharges into any state waters;

(b) construct or use any outlet for the discharge of sewage, industrial wastes, or other wastes into any state waters; or

(c) discharge sewage, industrial wastes, or other wastes into any state waters.

History: En. Sec. 126, Ch. 197, L. 1967; amd. Sec. 5, Ch. 21, L. 1971; amd. Sec. 3, Ch. 455, L. 1975; amd. Sec. 2, Ch. 444, L. 1977; R.C.M. 1947, 69-4806.

75-5-606 through 75-5-610 reserved.

75-5-611. Violation of chapter — notice and hearing. (1) When the department has reason to believe that a violation of this chapter or a rule made under it has occurred, it may have written notice served personally or by mail on the alleged violator or his agent. The notice shall state the provision alleged to be violated, the facts alleged to constitute the violation, the nature of corrective action which the department requires, and the time within which the action is to be taken. For the purposes of this chapter, service by mail is complete on the date of mailing.

(2) In a notice given under subsection (1) of this section, the department may require the alleged violator to appear before the board for a public hearing and to answer the charges made against him. The hearing shall be held no sooner than 15 days after service of the notice, except that the board may set an earlier date for hearing if it is requested to do so by the alleged violator. The board may set a later date for hearing at the request of the alleged violator if the alleged violator shows good cause for delay.

(3) If the department does not require an alleged violator to appear before the board for a public hearing, he may request the board to conduct the hearing. The request shall be in writing and shall be filed with the department no later than 30 days after service of a notice under subsection (1) of this section. If a request is filed, a hearing shall be held within a reasonable time.

(4) If a hearing is held under this section, it shall be public and shall, if the board considers it practicable, be held in a county in which the violation is alleged to have occurred.

(5) After a hearing or on failure of an alleged violator to make a timely request for a hearing, the board may issue an appropriate order for the prevention, abatement, or control of pollution. It shall state the date or dates by which a violation shall cease and may prescribe timetables for necessary action in preventing, abating, or controlling the pollution.

(6) The alleged violator may petition the board for a rehearing on the basis of new evidence, which petition the board may grant for good cause shown.

(7) In addition to or instead of issuing an order, the board may direct the department to initiate appropriate action for recovery of a penalty under 75-5-631, 75-5-632, 75-5-633, or 75-5-635.

History: En. Sec. 13, Ch. 21, L. 1971; amd. Sec. 65, Ch. 349, L. 1974; amd. Sec. 8, Ch. 455, L. 1975; R.C.M. 1947, 69-4820.

75-5-612. Additional sanctions authorized. In addition to all other remedies created by this chapter, the department is authorized to take appropriate enforcement action on its own initiative to prevent, abate, and control:

(1) the pollution of state waters;

(2) any violation of a condition or limitation imposed by a permit issued under 75-5-402(1); or

(3) any violation of rules relating to pretreatment standards.

History: En. 69-4820.1 by Sec. 5, Ch. 506, L. 1973; amd. Sec. 9, Ch. 455, L. 1975; amd. Sec. 10, Ch. 140, L. 1977; amd. Sec. 4, Ch. 308, L. 1977; amd. Sec. 5, Ch. 444, L. 1977; R.C.M. 1947, 69-4820.1(1).

75-5-613. Compliance orders. In furtherance of 75-5-612, a person violating a condition, limitation, standard, or other requirement established pursuant to this chapter may be served with a compliance order issued by the department. The order must specify the condition, limitation, standard, or other requirement violated and must set a time for compliance. However, in establishing a time for compliance, the department shall take into account the seriousness of the violation and any good-faith efforts that have been made to comply with the condition, limitation, standard, or other requirement that has been violated. The compliance order issued under this section shall be served either personally by a person qualified to perform service under the Montana Rules of Civil Procedure or by certified mail.

History: En. 69-4820.1 by Sec. 5, Ch. 506, L. 1973; amd. Sec. 9, Ch. 455, L. 1975; amd. Sec. 10, Ch. 140, L. 1977; amd. Sec. 4, Ch. 308, L. 1977; amd. Sec. 5, Ch. 444, L. 1977; R.C.M. 1947, 69-4820.1(2).

75-5-614. Injunctions authorized. (1) The department is authorized to commence a civil action seeking appropriate relief, including a permanent or temporary injunction, for a violation which would be subject to a compliance order under 75-5-613. An action under this subsection may be commenced in the district court of the county in which the defendant is located or resides or is doing business or any county where a violation occurs or is threatened if the defendant cannot be located in Montana, and the court shall have jurisdiction to restrain the violation and to require compliance.

(2) The department may bring an action for an injunction against the continuation of an alleged violation of the terms or conditions of a permit issued by the department or any rule or effluent standard promulgated under this chapter or against a person who fails to comply with an emergency order issued by the department under 75-5-621 or a final order of the board. The court to which the department applies for an injunction may issue a temporary injunction if it finds that there is reasonable cause to believe that the allegations of the department are true, and it may issue a temporary restraining order pending action on the temporary injunction.

History: (1)En. 69-4820.1 by Sec. 5, Ch. 506, L. 1973; amd. Sec. 9, Ch. 455, L. 1975; amd. Sec. 10, Ch. 140, L. 1977; amd. Sec. 4, Ch. 308, L. 1977; amd. Sec. 5, Ch. 444, L. 1977; Sec. 69-4820.1, R.C.M. 1947; (2)En. Sec. 19, Ch. 21, L. 1971; amd. Sec. 68, Ch. 349, L. 1974; amd. Sec. 12, Ch. 455, L. 1975; Sec. 69-4825, R.C.M. 1947; R.C.M. 1947, 69-4820.1(3), 69-4825.

75-5-615. Violators subject to penalties. (1) A person found to be in violation of a condition, limitation, standard, or other requirement established pursuant to 75-5-612 through 75-5-614 is subject to the penalty provisions of 75-5-631, 75-5-632, 75-5-633, and 75-5-635.

(2) For the purpose of this section, the term "person" means, in addition to the definition contained in 75-5-103, any responsible corporate officer.

History: En. 69-4820.1 by Sec. 5, Ch. 506, L. 1973; amd. Sec. 9, Ch. 455, L. 1975; amd. Sec. 10, Ch. 140, L. 1977; amd. Sec. 4, Ch. 308, L. 1977; amd. Sec. 5, Ch. 444, L. 1977; R.C.M. 1947, 69-4820.1(4), (5); amd. Sec. 6, Ch. 68, L. 1979.

75-5-616. Enforcement of permits and chapter. The department shall take such actions as are authorized or required under 75-5-612 through 75-5-615 to insure that the terms and conditions of issued permits are complied with and to insure that violations of this chapter are appropriately prosecuted.

History: En. Sec. 7, Ch. 21, L. 1971; amd. Sec. 3, Ch. 506, L. 1973; amd. Sec. 63, Ch. 349, L. 1974; amd. Sec. 6, Ch. 455, L. 1975; amd. Sec. 4, Ch. 444, L. 1977; R.C.M. 1947, 69-4809.1(1)(g).

75-5-617 through 75-5-620 reserved.

75-5-621. Emergencies. (1) Notwithstanding any other provisions of this chapter, if the department finds that a person is committing or is about to commit an act in violation of this chapter or an order or rule issued under it which, if it occurs or continues, will cause substantial pollution the harmful effects of which will not be remedied immediately after the commission or cessation of the act, the department shall order the person to stop, avoid, or moderate the act so that the substantial injury will not occur. The order shall be effective immediately upon receipt by the person to whom it is directed, unless the department provides otherwise.

(2) Notice of the order shall conform to the requirements of 75-5-611(1) so far as practicable. The notice shall indicate that the order is an emergency order.

(3) Upon issuing such an order, the department shall fix a place and time for a hearing before the board, not later than 5 days thereafter unless the person to whom the order is directed shall request a later time. The department may deny a request for a later time if it finds that the person to whom the order is directed is not complying with the order. The hearing shall be conducted in the manner specified in 75-5-611. As soon as practicable after the hearing, the board shall affirm, modify, or set aside the order of the department. The order of the board shall be accompanied by the statement specified in 75-5-611(5). An action for review of the order of the board may be initiated in the manner specified in 75-5-641. The initiation of such an action or taking of an appeal may not stay the effectiveness of the order unless the court finds that the board did not have reasonable cause to issue an order under this section.

History: **En. Sec. 18, Ch. 21, L. 1971; amd. Sec. 11, Ch. 140, L. 1977; R.C.M. 1947, 69-4824.**

75-5-622. Additional emergency powers. Notwithstanding any other provisions of this chapter, the department, upon receipt of evidence that a pollution source or combination of sources is endangering the health, welfare, or livelihood of a person, may bring suit in the district court of any county in which the defendant is located or resides or is doing business to enjoin the discharge of pollutants causing or contributing to the alleged pollution.

History: **En. 69-4824.1 by Sec. 7, Ch. 506, L. 1973; R.C.M. 1947, 69-4824.1.**

75-5-623 through 75-5-630 reserved.

75-5-631. Civil penalties — injunctions not barred. (1) A person who violates this chapter or a rule, permit, effluent standard, or order issued under the provisions of this chapter shall be subject to a civil penalty not to exceed $10,000. Each day of violation constitutes a separate violation.

(2) Action under this section does not bar enforcement of this chapter or of rules or orders issued under it by injunction or other appropriate remedy.

(3) The department shall institute and maintain any enforcement proceedings in the name of the state.

History: **En. Sec. 17, Ch. 21, L. 1971; amd. Sec. 6, Ch. 506, L. 1973; amd. Sec. 67, Ch. 349, L. 1974; amd. Sec. 11, Ch. 455, L. 1975; R.C.M. 1947, 69-4823(1), (3).**

75-5-632. Criminal penalties. A person who willfully or negligently violates 75-5-605 or any pretreatment standard established pursuant to this chapter is guilty of an offense and subject to a fine not to exceed $25,000 per day of violation or imprisonment for not more than 1 year, or both. Following an initial conviction under this section, subsequent convictions shall subject a person to a fine of not more than $50,000 per day of violation or imprisonment for not more than 2 years, or both.

History: En. Sec. 17, Ch. 21, L. 1971; amd. Sec. 6, Ch. 506, L. 1973; amd. Sec. 67, Ch. 349, L. 1974; amd. Sec. 11, Ch. 455, L. 1975; R.C.M. 1947, 69-4823(2).

75-5-633. Penalties for false statements and falsifying monitoring. Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this chapter or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this chapter shall upon conviction be punished by a fine of not more than $10,000 or by imprisonment for not more than 6 months, or both.

History: En. Sec. 17, Ch. 21, L. 1971; amd. Sec. 6, Ch. 506, L. 1973; amd. Sec. 67, Ch. 349, L. 1974; amd. Sec. 11, Ch. 455, L. 1975; R.C.M. 1947, 69-4823(6).

75-5-634. Fines to go to general fund. Fines collected shall be deposited to the state general fund.

History: En. Sec. 17, Ch. 21, L. 1971; amd. Sec. 6, Ch. 506, L. 1973; amd. Sec. 67, Ch. 349, L. 1974; amd. Sec. 11, Ch. 455, L. 1975; R.C.M. 1947, 69-4823(5).

75-5-635. Costs and expenses — recovery by department. In a civil action initiated by the department under this chapter, the department may ask for and the court is authorized to assess a violator for the cost of the investigation or monitoring survey which led to the establishment of the violation and any expense incurred by the state in removing, correcting, or terminating any of the adverse effects upon water quality resulting from the unauthorized discharge of pollutants.

History: En. Sec. 17, Ch. 21, L. 1971; amd. Sec. 6, Ch. 506, L. 1973; amd. Sec. 67, Ch. 349, L. 1974; amd. Sec. 11, Ch. 455, L. 1975; R.C.M. 1947, 69-4823(7).

75-5-636. Action by other parties. A person, association, corporation, or agency of the state or federal government may apply to the department protesting a violation of this chapter. The department shall make an investigation and make a written report to the person, association, corporation, or agency which made the protest. If a violation is established by the investigation of the department, appropriate enforcement action shall be taken.

History: En. Sec. 20, Ch. 21, L. 1971; amd. Sec. 69, Ch. 349, L. 1974; amd. Sec. 13, Ch. 455, L. 1975; R.C.M. 1947, 69-4826.

75-5-637 through 75-5-640 reserved.

75-5-641. Appeals from board orders — review by district court. (1) An appeal of an order of the board shall be in the district court of the county in which the alleged source of pollution is located.

(2) A person interested in the order may intervene, in the manner provided by the rules of civil procedure, if he shows good cause. An intervenor is a party for the purposes of this chapter.

(3) The attorney general shall represent the board if requested, or the department may appoint special counsel for the proceedings, subject to the approval of the attorney general.

(4) The initiation of an action for review or the taking of an appeal does not stay the effectiveness of any order of the board unless the court finds that there is probable cause to believe:

(a) that refusal to grant a stay will cause serious harm to the affected party; and

(b) that any violation found by the board will not continue or, if it does continue, any harmful effects on state waters will be remedied immediately on the cessation of the violation.

(5) If a court does not stay the effectiveness of an order of the board, it may enforce compliance with that order by issuing a temporary restraining order or an injunction at the request of the board.

History: En. Sec. 15, Ch. 21, L. 1971; amd. Sec. 66, Ch. 349, L. 1974; R.C.M. 1947, 69-4821.

CHAPTER 6

PUBLIC WATER SUPPLIES, DISTRIBUTION, AND TREATMENT

Part 1 — Public Water Supply

Section
75-6-101. Policy.
75-6-102. Definitions.
75-6-103. Duties of the board.
75-6-104. Duties of department.
75-6-105. Records required for wells drilled to supply water to public.
75-6-106. Licensing of laboratories.
75-6-107. Variances and exemptions.
Sections 75-6-108 through 75-6-110 reserved.
75-6-111. Appeal from rule or standard — injunction to require compliance.
75-6-112. Prohibited acts.
75-6-113. Penalty.

Part 1

Public Water Supply

75-6-101. Policy. It is the public policy of this state to protect, maintain, and improve the quality and potability of water for public water supplies and domestic uses.

History: En. Sec. 140, Ch. 197, L. 1967; R.C.M. 1947, 69-4901.

75-6-102. Definitions. As used in this part, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Board" means the board of health and environmental sciences provided for in 2-15-2104.

(2) "Contamination" means impairment of the quality of state waters by sewage, industrial wastes, or other wastes creating a hazard to human health.

(3) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(4) "Drainage" means rainfall, surface, and subsoil water.

(5) "Industrial waste" means any waste substance from the processes of business or industry or from the development of any natural resource, together with any sewage that may be present.

(6) "Maximum contaminant level" means the maximum permissible level of a contaminant in water which is delivered to any user of a public water supply system.

(7) "Other waste" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.

(8) "Person" means any individual, corporation, association, partnership, municipality, other political subdivision of the state, or federal agency.

(9) "Pollution" means contamination or other alteration of the physical, chemical, or biological properties of any state waters which exceeds that permitted by Montana water quality standards, including but not limited to standards relating to change in temperature, taste, color, turbidity, or odor or the discharge or introduction of any liquid, gaseous, solid, radioactive, or other substance into any state water which will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, welfare, livestock, wild animals, birds, fish, or other wildlife. A discharge which is authorized under the pollution discharge permit rules of the board is not pollution under this chapter.

(10) "Public water supply system" means a system for the provision of water for human consumption from any community well, water hauler for cisterns, water bottling plant, water dispenser, or other water supply that serves 10 or more families or 25 or more persons daily or has at least 10 service connections at least 60 days out of the calendar year.

(11) "Safe Drinking Water Act" means 42 U.S.C. 300f and regulations at Title 40, CFR, Parts 141 and 142.

(12) "Sewage" means water-carried waste products from residences, public buildings, institutions, or other buildings, including discharge from human beings, together with groundwater infiltration and surface water present.

(13) "State waters" means any body of water, irrigation system, or drainage system, either surface or underground.

History: En. Sec. 141, Ch. 197, L. 1967; amd. Sec. 1, Ch. 67, L. 1974; amd. Sec. 1, Ch. 556, L. 1977; R.C.M. 1947, 69-4902; amd. Sec. 1, Ch. 556, L. 1979.

75-6-103. Duties of the board. (1) The board has general supervision over all state waters which are directly or indirectly being used by a person for a public water supply system or domestic purposes or as a source of ice.

(2) The board shall adopt rules and standards concerning:

(a) maximum contaminant levels for waters that are or will be used for a public water supply system;

(b) fees for services rendered by the department in analyzing water and conducting inspections;

(c) monitoring, recordkeeping, and reporting by persons who own or operate a public water supply system;

(d) requiring public notice to all users of a public water supply system when a person has been granted a variance or exemption or is in violation of this part or a rule or order issued pursuant to this part;

(e) the issuance of licenses by the department to laboratories that conduct analysis of public water supply systems;

(f) the siting, construction, operation, and modification of a public water supply system;

(g) the collection and analysis of samples of water used for drinking or domestic purposes;

(h) the issuance of variances and exemptions as authorized by the federal Safe Drinking Water Act and this part; and

(i) any other requirement necessary for the protection of public health as described in this part.

(3) The board may issue orders necessary to fully implement the provisions of this part.

History: En. Sec. 142, Ch. 197, L. 1967; amd. Sec. 70, Ch. 349, L. 1974; amd. Sec. 2, Ch. 556, L. 1977; R.C.M. 1947, 69-4903; amd. Sec. 2, Ch. 556, L. 1979.

75-6-104. Duties of department. The department shall:

(1) upon its own initiative or complaint to the department, to the mayor or health officer of a municipality, or to the managing board or officer of a public institution, make an investigation of alleged pollution of a water supply system and, if required, prohibit the continuance of the pollution by ordering removal of the cause of pollution;

(2) have waters examined to determine their quality and the possibility that they may endanger public health;

(3) consult and advise authorities of cities and towns and persons having or about to construct systems for water supply, drainage, wastewater, and sewage as to the most appropriate source of water supply and the best method of assuring its quality;

(4) advise persons as to the best method of treating and disposing of their drainage, sewage, or wastewater with reference to the existing and future needs of other persons and to prevent pollution;

(5) consult with persons engaged in or intending to engage in manufacturing or other business whose drainage or sewage may tend to pollute waters as to the best method of preventing pollution;

(6) collect fees for services rendered in analyzing water and conducting inspections to cover costs of the service and deposit the fees collected in an earmarked revenue fund for use by the department;

(7) establish and maintain experiment stations and conduct experiments to study the best methods of treating water, drainage, wastewater, sewage, and industrial waste to prevent pollution, including investigation of methods used in other states;

(8) enter on premises at reasonable times to determine sources of pollution or danger to water supply systems and whether rules and standards of the board are being obeyed;

(9) enforce and administer the provisions of this part;

(10) establish a plan for the provision of safe drinking water under emergency circumstances;

(11) maintain an inventory of public water supply systems and establish a program for conducting sanitary surveys; and

(12) enter into agreements with local boards of health wherever appropriate for the performance of surveys and inspections under the provisions of this part.

History: **En. Sec. 143, Ch. 197, L. 1967; amd. Sec. 71, Ch. 349, L. 1974; amd. Sec. 3, Ch. 556, L. 1977; R.C.M. 1947, 69-4904; amd. Sec. 3, Ch. 556, L. 1979.**

75-6-105. Records required for wells drilled to supply water to public. Every person drilling a water well to furnish water for public consumption shall keep a complete record of the depth, thickness, and character of different strata and other information prescribed by the board. Data shall be furnished to the department on forms prescribed by it. These data are available to the public at all reasonable times.

History: **En. Sec. 145, Ch. 197, L. 1967; R.C.M. 1947, 69-4906.**

75-6-106. Licensing of laboratories. (1) No laboratory analysis of water taken from a public water supply system or any report of such an analysis required by this part or a rule adopted under this part may be accepted by the department or board unless the analysis or report is made by the laboratory of the department or by a laboratory licensed by the department for such purposes. The department shall issue a license to any laboratory that can meet criteria for licensing established in the rules adopted by the board.

(2) An application for a license under this section shall be made on forms furnished by the department.

(3) A person aggrieved by a decision of the department to grant, deny, or revoke a license may appeal the department's decision to the board as provided in the Montana Administrative Procedure Act.

History: **En. 69-4905.2 by Sec. 5, Ch. 556, L. 1977; R.C.M. 1947, 69-4905.2; amd. Sec. 4, Ch. 556, L. 1979.**

75-6-107. Variances and exemptions. The department may grant a variance or exemption from the requirements of this part or the rules adopted under this part pursuant to the terms and conditions of the variance and exemption rules adopted by the board. A variance or exemption granted pursuant to this section shall be accompanied by a compliance plan specifying a time schedule for compliance. A person aggrieved by a decision of the department to grant, deny, revoke, or modify a variance or exemption may appeal the department's decision to the board as provided in the Montana Administrative Procedure Act.

History: **En. 69-4905.1 by Sec. 4, Ch. 556, L. 1977; R.C.M. 1947, 69-4905.1; amd. Sec. 5, Ch. 556, L. 1979.**

75-6-108 through 75-6-110 reserved.

75-6-111. Appeal from rule or standard — injunction to require compliance. (1) A person aggrieved by a rule, standard, or order adopted or issued pursuant to this part may appeal to the district court. While the appeal is pending, the rule, standard, or order is in force.

(2) The department may seek an injunction from the appropriate district court to require compliance with this part or a rule or order issued as authorized by this part. The department may also initiate an action to collect a criminal penalty as provided in 75-6-113.

History: **En. Sec. 146, Ch. 197, L. 1967; amd. Sec. 72, Ch. 349, L. 1974; amd. Sec. 6, Ch. 556, L. 1977; R.C.M. 1947, 69-4907(1), (2); amd. Sec. 7, Ch. 68, L. 1979.**

75-6-112. Prohibited acts. A person shall not:

(1) discharge sewage, drainage, industrial waste, or other wastes that will cause pollution of state waters used by a person for domestic use or as a source for a public water supply system or water or ice company;

(2) discharge sewage, drainage, industrial waste, or other waste into any state waters or on the banks of any state waters or into any abandoned or operating water well unless the sewage, drainage, industrial waste, or other waste is treated as prescribed by the board;

(3) build or operate any railroad, logging road, logging camp, or electric or manufacturing plant of any kind on any watershed of a public water supply system unless:

(a) the water supply is protected from pollution by sanitary precautions prescribed by the board; and

(b) a permit has been issued by the department after approval of detailed plans and specifications for sanitary precautions;

(4) construct, alter, or extend any system of water supply, water distribution, sewer, drainage, wastewater, or sewage disposal without first submitting necessary maps, plans, and specifications to the department for its review and approval;

(5) operate or maintain any public water supply system which exceeds a maximum contaminant level established by the board unless he has been granted or has an application pending for a variance or exemption pursuant to this part.

History: **En. Sec. 144, Ch. 197, L. 1967; R.C.M. 1947, 69-4905; amd. Sec. 6, Ch. 556, L. 1979.**

Compiler's Comments

Saving clause. Sec. 7, Ch. 556, L. 1979, provided: "This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act." Effective July 1, 1979.

Severability. Sec. 8, Ch. 556, L. 1979, was a severability clause.

75-6-113. Penalty. Any person violating this part or any rule or order of the board or department issued under the provisions of this part shall be guilty of a misdemeanor and upon conviction shall be fined not less than $50 or more than $500. Each day upon which a violation of this part occurs shall be considered a separate offense.

History: **En. Sec. 146, Ch. 197, L. 1967; amd. Sec. 72, Ch. 349, L. 1974; amd. Sec. 6, Ch. 556, L. 1977; R.C.M. 1947, 69-4907(3).**

CHAPTER 7

AQUATIC ECOSYSTEM PROTECTIONS

Part 1 — Streambeds

Section
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75-7-104. Vested water rights preserved.
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75-7-112. Procedure for considering projects — team.
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75-7-215. Judicial enforcement and review.
75-7-216. Penalty.
75-7-217. Funding.

Part 1

Streambeds

75-7-101. Short title. This part may be cited as "The Natural Streambed and Land Preservation Act of 1975".

History: En. 26-1510 by Sec. 1, Ch. 463, L. 1975; R.C.M. 1947, 26-1510.

75-7-102. Policy. It is the policy of the state of Montana that its natural rivers and streams and the lands and property immediately adjacent to them within the state are to be protected and preserved to be available in their natural or existing state and to prohibit unauthorized projects and in so doing to keep soil erosion and sedimentation to a minimum, except as may be necessary and appropriate after due consideration of all factors involved. Further, it is the policy of this state to recognize the needs of irrigation and agricultural use of the rivers and streams of the state of Montana and to protect the use of water for any useful or beneficial purpose as guaranteed by The Constitution of the State of Montana.

History: En. 26-1511 by Sec. 2, Ch. 463, L. 1975; R.C.M. 1947, 26-1511.

75-7-103. Definitions. As used in this part, the following definitions apply:

(1) "Applicant" means any person presenting notice of a project to the supervisors.

(2) "Department" means the Montana department of fish, wildlife, and parks.

(3) "District" means a conservation district under Title 76, chapter 15, in which the project will take place; a grass conservation district under Title 76, chapter 16, where no conservation district exists, or the board of county commissioners where a district does not exist.

(4) "Person" means any natural person, corporation, firm, partnership, association, or other legal entity not covered under 87-5-502.

(5) "Project" means a physical alteration or modification of a stream in the state of Montana which results in a change in the state of the stream in contravention of 75-7-102.

(6) "Stream" means any natural perennial-flowing stream or river, its bed and immediate banks.

(7) "Supervisors" means the board of supervisors of a conservation district, the directors of a grass conservation district, or the board of county commissioners where a proposed project is not within a district.

(8) "Team" means one representative of the supervisors, one representative of the department, and the applicant or his representative.

History: En. 26-1512 by Sec. 3, Ch. 463, L. 1975; R.C.M. 1947, 26-1512; amd. Sec. 2, Ch. 218, L. 1979.

75-7-104. Vested water rights preserved. This part shall not impair, diminish, divest, or control any existing or vested water rights under the laws of the state of Montana or the United States.

History: En. 26-1516 by Sec. 7, Ch. 463, L. 1975; R.C.M. 1947, 26-1516.

75-7-105. Application of floodplain management. Approval for proposed projects or alternate plans does not relieve the applicant of the responsibility of complying with Title 76, chapter 5, parts 1 through 4, floodway management and regulation, where designated floodplains or designated floodways have been established in accordance with that chapter.

History: En. 26-1519 by Sec. 10, Ch. 463, L. 1975; R.C.M. 1947, 26-1519.

75-7-106. Junked motor vehicles as reinforcement prohibited — penalty. (1) It is unlawful to place junked motor vehicles or the body portion of junked motor vehicles between high-water channel banks of any stream or to reinforce banks of a stream with such junked motor vehicles or the body portion of such junked motor vehicles.

(2) A person who willfully violates subsection (1) is guilty of a misdemeanor and upon conviction shall be fined not to exceed $250, imprisoned in the county jail for a term not to exceed 30 days, or both.

(3) A person who violates subsection (1) shall be subject to a civil penalty of not more than $50. Each day upon which a violation occurs is a separate violation.

History: (1)En. 69-6811 by Sec. 1, Ch. 112, L. 1975; amd. Sec. 19, Ch. 140, L. 1977; Sec. 69-6811, R.C.M. 1947; (2), (3)En. 69-6812 by Sec. 2, Ch. 112, L. 1975; amd. Sec. 8, Ch. 252, L. 1977; Sec. 69-6812, R.C.M. 1947; R.C.M. 1947, 69-6811, 69-6812(part).

75-7-107 through 75-7-110 reserved.

75-7-111. Notice of project. (1) A person planning to engage in a project shall present written notice of the project to the supervisors before any portion of the project takes place.

(2) The notice shall include the location, general description, and preliminary plan of the project.

History: En. 26-1513 by Sec. 4, Ch. 463, L. 1975; R.C.M. 1947, 26-1513.

75-7-112. Procedure for considering projects — team. (1) The supervisors shall receive all notices of proposed projects within their district. They shall, within 5 days of receipt of a notice, examine and investigate the notice and determine whether the proposal is for a project. Within the 5 days, they shall send a copy of their determination to the department and the applicant. If the supervisors determine that the proposal is not a project, the applicant may, upon receipt of written notice, proceed with the proposed activity.

(2) If the supervisors determine that the proposal is for a project, the department shall, within 5 days of receipt of the determination, notify the supervisors whether the department requests an on-site inspection by a team.

(3) The supervisors shall call a team together within 20 days of receipt of the request of the department for an on-site inspection. A member of the team shall notify the supervisors in writing, within 5 days after notice of the call for an inspection, of his waiver of participation in the inspection. If the department does not request an on-site inspection within the time specified above, the supervisors may deny or approve the project or may make recommendations for alternative plans.

(4) Each member of the team shall recommend in writing, within 50 days of the date of application, denial, approval, or modification of the project to the supervisors. The applicant may waive participation in this recommendation.

(5) The supervisors shall review the proposed project and affirm, overrule, or modify the individual team recommendations and notify the applicant and team members, within 60 days of the date of application, of their decision.

(6) When a member of the team disagrees with the supervisors' action, he may ask, within 5 days of receipt of the supervisors' decision, that an arbitration panel as provided in 75-7-114 be appointed to hear the dispute and make a final written decision thereon.

(7) Upon written notice, with a recommendation or alternative plan, by the supervisors to the applicant, the applicant, within 15 days, shall notify the supervisors in writing if he wishes to proceed with the project in accordance with the recommendations or alternative plans. No work may be commenced on a project before the end of this 15-day period unless written permission is given by all team members. If the written decision of the supervisors approves the proposed project without recommendation or alternative plan, the applicant may proceed with the project upon the expiration of 10 days after receipt of the decision.

(8) The supervisors may extend, upon the request of a team member, the time limits provided in subsections (4) and (5) where, in their determination, the time provided is not sufficient to carry out the purposes of this part. The

time extension may not, in total, exceed 1 year from date of application. The applicant shall be notified, within 60 days of date of application, of the initial time extension and shall be notified immediately of any subsequent time extensions.

(9) No work on a project under this part may take place without the written consent of the supervisors.

History: En. 26-1514 by Sec. 5, Ch. 463, L. 1975; amd. Sec. 1, Ch. 140, L. 1977; R.C.M. 1947, 26-1514.

75-7-113. Emergencies — procedure. (1) The provisions of this part do not apply to those actions which are necessary to safeguard life or property, including growing crops, during periods of emergency. The person responsible for a project under this section shall notify the supervisors in writing within 15 days of the action taken as a result of an emergency.

(2) The supervisors shall send one copy of the notice, within 5 days of its receipt, to the department.

(3) A team, called together as described in 75-7-112(3), shall make an on-site inspection and individual written reports to the supervisors within 30 days, giving its observations and opinions on the emergency project.

(4) If the same or a similar emergency occurs to the same applicant more than once within a 5-year period, the supervisors shall request the team members to include in their reports a determination of the validity of the emergency action and to ascertain the feasibility of a more permanent solution to the emergency.

(5) The supervisors shall determine the feasibility of a more permanent solution and shall, within 30 days, recommend that the person put the solution into effect within a reasonable period of time as determined by the supervisors. Failure of the person to put that solution into effect is not a violation of this part unless a subsequent emergency action results from this failure.

(6) When a member of the team or the applicant disagrees with the supervisors' recommendation, he may ask that an arbitration panel as provided in 75-7-114 be appointed to hear the dispute and make a final written decision thereon.

History: En. 26-1517 by Sec. 8, Ch. 463, L. 1975; amd. Sec. 2, Ch. 140, L. 1977; R.C.M. 1947, 26-1517.

75-7-114. Arbitration panel — selection. The arbitration panel shall consist of three members chosen by the senior judge of the judicial district in which the dispute takes place. The members shall be residents of that judicial district at the time of selection. This panel shall sit for only that period of time necessary to settle the dispute before it and will review the proposed project in line with the policy set forth in 75-7-102.

History: En. 26-1515 by Sec. 6, Ch. 463, L. 1975; R.C.M. 1947, 26-1515(1).

75-7-115. Arbitration panel — costs. Cost of the arbitration panel, computed as for jurors' fees under 3-15-201, shall be borne by the contesting party or parties; all other parties shall bear their own costs.

History: En. 26-1515 by Sec. 6, Ch. 463, L. 1975; R.C.M. 1947, 26-1515(2).

75-7-116. Modification of plan — assignment of costs. (1) If the final decision of the arbitration panel requires modifications or alterations from the original project plan as approved by the supervisors, then the arbitration panel shall include in its decision any part or percent of these modifications or alterations that is for the direct benefit of the public and it shall assign any costs to the proper participant.

(2) Any of the involved entities may withdraw or modify required modification of the project within 10 days after the decision.

History: En. 26-1518 by Sec. 9, Ch. 463, L. 1975; R.C.M. 1947, 26-1518.

75-7-117 through 75-7-120 reserved.

75-7-121. Judicial review. Any final action under this part may be appealed within 30 days to the district court.

History: En. 26-1521 by Sec. 12, Ch. 463, L. 1975; R.C.M. 1947, 26-1521.

75-7-122. Public nuisance. Except for emergency action, a project engaged in by any person without prior approval as prescribed in this part is declared a public nuisance and subject to proceedings for immediate abatement.

History: En. 26-1522 by Sec. 13, Ch. 463, L. 1975; R.C.M. 1947, 26-1522.

75-7-123. Initiating project without consent — penalty — restoration. Any person initiating a project without written consent of the supervisors is guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than $25 or more than $500 for each day that person continues to physically alter or modify the stream, and in addition, that person shall restore, at the discretion of the court, the damaged stream, as recommended by the team and approved by the supervisors, to as near its prior condition as possible.

History: En. 26-1523 by Sec. 14, Ch. 463, L. 1975; R.C.M. 1947, 26-1523(1).

75-7-124. Violation of time provisions — penalty. Any person or entity who violates the time provisions of this part is guilty of a misdemeanor and upon conviction shall be punished by a fine of $5 per day.

History: En. 26-1523 by Sec. 14, Ch. 463, L. 1975; R.C.M. 1947, 26-1523(2).

Part 2

Lakeshores

75-7-201. Policy. The legislature finds and declares that the natural lakes of Montana are high in scenic and resource values and that the conservation and protection of these lakes is important to the continued value of lakeshore property as well as to the state's residents and visitors who use and enjoy the lakes. The legislature further declares that local governments should play the primary public roles in establishing policies to conserve and protect lakes. Local governments do not have adequate statutory powers to protect their lake areas, and it is the purpose of this part to confer such powers on local governments, provided that such powers are exercised to maintain public health, welfare, and safety.

History: En. 89-3701 by Sec. 1, Ch. 527, L. 1975; R.C.M. 1947, 89-3701.

75-7-202. Definitions. As used in this part, the following definitions apply:

(1) "Lake" means a body of standing water and the area within its lakeshore occurring naturally rather than by virtue of constructed impoundments (although a natural lake whose level is raised and whose area is increased by the construction of impoundments includes the additional level and area), having a water surface area of at least 160 acres for at least 6 months in a year of average precipitation as such averages are determined by the United States geological survey, not used exclusively for agricultural purposes, and navigable by canoes and small boats.

(2) "Lakeshore" is the perimeter of a lake when the lake is at mean annual high-water elevation, including the land within 20 horizontal feet from that high-water elevation.

(3) "Local governing body" or "governing body" is that unit of local government authorized to administer the Montana Subdivision and Platting Act on the land adjoining a lake or part of a lake subject to this part.

(4) "Mean annual high-water elevation" is the mean average of the highest elevation of a lake in each of at least 5 consecutive years, excluding any high levels caused by erratic or unusual weather or hydrological conditions. A highest elevation caused by operation of a dam or other impoundment counts toward the establishment of the mean annual high-water elevation.

History: En. 89-3702 by Sec. 2, Ch. 527, L. 1975; R.C.M. 1947, 89-3702(part).

75-7-203. Change in definition of lake by local government. A local governing body may by resolution change the minimum size in the definition of a lake so that this part may apply to natural lakes in the county no smaller than 20 acres in water surface area.

History: En. 89-3702 by Sec. 2, Ch. 527, L. 1975; R.C.M. 1947, 89-3702(part).

75-7-204. Work for which permit required. (1) A person who proposes to do any work that will alter or diminish the course, current, or cross-sectional area of a lake or its lakeshore must first secure a permit for the work from the local governing body.

(2) Without limitation, the following activities, when conducted below mean annual high-water elevation, are examples of work for which a permit is required: construction of channels and ditches; dredging of lake bottom areas to remove muck, silt, or weeds; lagooning, meaning the placement of a narrow strip of land across a portion of a lake to create a lagoon; filling; constructing breakwaters of pilings; constructing wharves and docks.

History: En. 89-3703 by Sec. 3, Ch. 527, L. 1975; R.C.M. 1947, 89-3703; amd. Sec. 8, Ch. 68, L. 1979.

75-7-205. Unauthorized work. A person who performs work in a lake after May 1, 1975, without a permit for that work shall, if required by the local governing body or the district court, restore the lake to its condition before he disturbed it.

History: En. 89-3708 by Sec. 8, Ch. 527, L. 1975; R.C.M. 1947, 89-3708(1).

75-7-206. Nature of property rights under part. Work or development authorized or approved under this part shall not create a vested property right in the permitted development other than in the physical structure, if any, so developed.

History: En. 89-3708 by Sec. 8, Ch. 527, L. 1975; R.C.M. 1947, 89-3708(2).

75-7-207. Regulations for issuance of permits. (1) Before January 1, 1976, every governing body having jurisdiction over an area containing a lake shall adopt regulations in the form of criteria for the issuance or denial of permits for work in lakes.

(2) Where a planning board has been created under 76-1-104 for an area containing a lake, the governing body shall seek the recommendations of the planning board as to the regulations to be adopted under this part.

(3) The local governing body may provide a summary procedure to permit work which it finds has a minimal or insignificant impact on a lakeshore.

(4) A governing body whose area contains more than one lake may adopt regulations in differing form for the various lakes, recognizing the physical and social differences between lakes.

(5) The requirements of 75-7-208 are minimum requirements and do not restrict a local governing body from adopting such stricter or additional regulations as may be authorized by other statutes.

History: En. 89-3704 by Sec. 4, Ch. 527, L. 1975; R.C.M. 1947, 89-3704(1), (3) thru (5).

75-7-208. Factors favoring issuance of permit. The regulations shall favor issuance if the proposed work will not during either its construction or its utilization:

(1) materially diminish water quality;

(2) materially diminish habitat for fish or wildlife;

(3) interfere with navigation or other lawful recreation;

(4) create a public nuisance; or

(5) create a visual impact discordant with natural scenic values, as determined by the local governing body, where such values form the predominant landscape elements.

History: En. 89-3704 by Sec. 4, Ch. 527, L. 1975; R.C.M. 1947, 89-3704(2).

75-7-209. Regulations for particular lake. Upon petition of five owners or 30% of the owners of land abutting a lake, whichever is smaller, the department of natural resources and conservation may adopt regulations under 75-7-207 and 75-7-208 for the particular lake. The department may then exercise the powers conferred upon a local governing body by this part until the governing body adopts the necessary regulations.

History: En. 89-3704 by Sec. 4, Ch. 527, L. 1975; R.C.M. 1947, 89-3704(6).

75-7-210. Application for permit — fee. A person seeking a permit for work in a lake shall apply to the local governing body and shall pay an application fee of $10 to the governing body.

History: En. 89-3705 by Sec. 5, Ch. 527, L. 1975; R.C.M. 1947, 89-3705(part).

75-7-211. Consultation with local planning board. (1) Where a planning board has been created under 76-1-104 for the area containing the lake in question, the governing body shall seek the recommendation of the planning board as to the compliance of the proposed work with the criteria for the issuance of a permit. The planning board shall report its recommendations to the governing body as to whether the proposed work conforms to the criteria for issuance of a permit and may require the applicant to submit additional information before the board reports its recommendations.

(2) In areas where a planning board is not established, the functions of a planning board under this section shall be exercised by the local governing body.

History: **En. 89-3705 by Sec. 5, Ch. 527, L. 1975; R.C.M. 1947, 89-3705(part).**

75-7-212. Issuance of permit. (1) Unless the applicant agrees to an extension of time, the governing body shall grant or deny permission for the work within 90 days of receiving an application for a permit.

(2) If the governing body finds that the proposed work conforms to the criteria for issuing a permit, it shall issue a permit or conditional permit.

(3) If the governing body finds that the work does not conform to the criteria, it shall deny the application.

History: **En. 89-3706 by Sec. 6, Ch. 527, L. 1975; R.C.M. 1947, 89-3706.**

75-7-213. Variance procedure. A governing body which proposes to grant a variance from its regulations under this part shall first prepare an environmental impact statement, at the expense of the applicant, which conforms to the requirements of regulations adopted pursuant to this part, distribute this statement to interested residents, and conduct a public hearing on the proposed action.

History: **En. 89-3707 by Sec. 7, Ch. 527, L. 1975; R.C.M. 1947, 89-3707.**

75-7-214. Cooperation between governing bodies. If a lake, as defined by this part, is located under the jurisdiction of more than one governing body, the governing bodies are empowered and encouraged to enter into agreements to effectuate the purposes of this part and establish compatible criteria for denial or issuance of permits.

History: **En. 89-3709 by Sec. 9, Ch. 527, L. 1975; R.C.M. 1947, 89-3709.**

75-7-215. Judicial enforcement and review. The district court may hear and decide the following cases arising under this part within the district:

(1) a complaint and petition of a governing body or an interested person for an order to restore a lake to its previous condition or to enjoin further work in a lake;

(2) a petition of an interested person for review of a final action of a governing body upon an application for a permit;

(3) a petition of an interested person for review of an action of a governing body in adopting or amending regulations.

History: **En. 89-3710 by Sec. 10, Ch. 527, L. 1975; R.C.M. 1947, 89-3710.**

75-7-216. Penalty. (1) A person who violates an order issued under this part or who knowingly violates a regulation made under this part commits a misdemeanor and on conviction may be sentenced to 30 days in the county jail or fined $500, or both.

(2) Fines collected under this section shall be paid to the general fund of the county where the offense was committed for the purpose of administering this part.

History: **En. 89-3711 by Sec. 11, Ch. 527, L. 1975; R.C.M. 1947, 89-3711.**

75-7-217. Funding. In compliance with 1-2-112, the administration of this part is declared a public purpose of a city or county which may be paid out of permit application fees collected under 75-7-210 and federal revenue sharing moneys.

History: **En. 89-3712 by Sec. 12, Ch. 527, L. 1975; R.C.M. 1947, 89-3712.**

CHAPTERS 8 AND 9

RESERVED

CHAPTER 10

MANAGEMENT OF MATERIAL RECYCLING LITTER CONTROL

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75-10-111. State solid waste management plan — hearings and action.
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75-10-122. Considerations in setting loan priorities.
75-10-123. Availability of state loans.
75-10-124. Approval, payment, and compliance.
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Part 1

Plans, Funds, and Administration

75-10-101. Purpose. The purpose of this part is to encourage the good management of solid waste and the conservation of natural resources through the promotion or development of systems to collect, separate, reclaim, recycle, and dispose of solid waste for energy production purposes where economically feasible and to provide a coordinated state solid waste and resource recovery plan.

History: En. 69-4012 by Sec. 2, Ch. 575, L. 1977; R.C.M. 1947, 69-4012(part).

75-10-102. Public policies. (1) To implement this part, the following are declared to be public policies of this state:

(a) Maximum recycling from solid waste is necessary to protect the public health, welfare, and quality of the natural environment.

(b) Solid waste management systems shall be developed, financed, planned, designed, constructed, and operated for the benefit of the people of this state.

(c) Private industry is to be utilized to the maximum extent possible in planning, designing, managing, constructing, operating, manufacturing, and marketing functions related to solid waste management systems.

(d) Local governments shall retain primary responsibility for adequate solid waste management with the state preserving those functions necessary to assure effective solid waste management systems throughout the state.

(e) Encouragement and support be given to individuals and municipalities to separate solid waste at its source in order to maximize the value of such wastes for reuse.

(f) The state shall provide technical advisory assistance to local governments and other affected persons in the planning, developing, financing, and implementation of solid waste management systems.

(g) Actions and activities performed or carried out by persons and their contractors in accordance with this part shall be in conformity with the state solid waste plan.

(2) This part is in addition and supplemental to any other law providing for the financing of a solid waste management system and does not amend or repeal any other law.

History: En. 69-4012, 69-4019 by Secs. 2, 9, Ch. 575, L. 1977; R.C.M. 1947, 69-4012(part), 69-4019.

75-10-103. Definitions. Unless the context clearly requires otherwise, in this part the following definitions apply:

(1) "Board" means the board of health and environmental sciences provided for in 2-15-2104.

(2) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(3) "Front-end organizational funds" means the money to be loaned to local governments for initial operating capital, site evaluation and negotiation, final design engineering and cost estimates, construction contract documents, final contract negotiations with energy users, material markets, and waste suppliers, contract negotiations with private operational managers, and financial and legal consultations.

(4) "Front-end planning funds" means the money granted to local governments for contract negotiations between local governments, predesign engineering and cost estimates, administrative costs, preliminary contract

negotiations with energy users and waste suppliers, financial feasibility analysis by a financial consultant, legal consultations, opinions, and review of contracts.

(5) "Front-end implementation funds" means the money granted to local governments for purchase of capital equipment to be used for a solid waste management system.

(6) "Local government" means a county, incorporated city or town, or refuse disposal district organized under the laws of this state.

(7) "Person" means any individual, firm, partnership, company, association, corporation, city, town, local governmental entity, or any other state, federal, or private entity, whether organized for profit or not.

(8) "Resource recovery facility" means any facility at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse.

(9) "Solid waste" means all putrescible and nonputrescible wastes, including but not limited to garbage, rubbish, refuse, hazardous wastes, ashes, sludge from sewage treatment plants, water supply treatment plants, or air pollution control facilities; septic tank and cesspool pumpings; construction and demolition wastes; dead animals, including offal; discarded home and industrial appliances; wood wastes and inert materials; but does not include municipal sewage, industrial wastewater effluents, or mining wastes as regulated under the mining and reclamation laws administered by the department of state lands.

(10) "Solid waste management system" means any system which controls the storage, treatment, recycling, recovery, or disposal of solid waste.

(11) "State solid waste plan" means the statewide plan formulated by the department as authorized by this part.

History: En. 69-4013 by Sec. 3, Ch. 575, L. 1977; R.C.M. 1947, 69-4013; amd. Sec. 1, Ch. 482, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "state" after "means the" at the beginning of (3) and (4); inserted subsection (5).

Saving Clause: Section 6, Ch. 482, L. 1981, was a saving section.

Severability: Section 7, Ch. 482, L. 1981, was a severability section.

75-10-104. Duties of department. The department shall:

(1) prepare a state solid waste management and resource recovery plan for submission to the board;

(2) prepare rules necessary for the implementation of this part for submission to the board, including but not limited to rules governing the submission of plans for a solid waste management system, rules governing procedures to be followed in applying for and making loans, and rules governing agreements between a local government and the department for grants or loans under this part;

(3) provide financial assistance to local governments for front-end planning activities for a proposed solid waste management system which is compatible with the state plan whenever such financial assistance is available;

(4) provide technical assistance to persons within the state for planning, designing, constructing, financing, and operating a solid waste management system in order to insure that the system conforms to the state plan;

(5) provide front-end organizational loans for the implementation of an approved solid waste management system whenever funds for such loans are available;

(6) enforce and administer the provisions of this part;

(7) administer loans made by the state under the provisions of this part; and

(8) approve plans for a proposed solid waste management system submitted by a local government.

History: En. 69-4014 by Sec. 4, Ch. 575, L. 1977; R.C.M. 1947, 69-4014(1).

75-10-105. Powers of department. The department may:

(1) accept loans and grants from the federal government and other sources to carry out the provisions of this part;

(2) make loans to a local government for the planning, design, and implementation of a solid waste management system; and

(3) make grants for a local government for planning or implementation of a solid waste management system.

History: En. 69-4014 by Sec. 4, Ch. 575, L. 1977; R.C.M. 1947, 69-4014(2); amd. Sec. 2, Ch. 482, L. 1981.

Compiler's Comments

1981 Amendment: Added subsection (3).

Saving Clause: Section 6, Ch. 482, L. 1981, was a saving section.

Severability: Section 7, Ch. 482, L. 1981, was a severability section.

75-10-106. Duties of board. The board shall:

(1) adopt a state solid waste management and resource recovery plan after complying with the procedures outlined in 75-10-111; and

(2) adopt rules necessary for the implementation of this part, including but not limited to rules governing the following:

(a) submission of plans for a solid waste management system;

(b) the procedures to be followed in applying for and making loans and grants;

(c) the requirements for eligibility for grants; and

(d) the agreements between the local government and the department for grants and loans under this part.

History: En. 69-4015 by Sec. 5, Ch. 575, L. 1977; R.C.M. 1947, 69-4015; amd. Sec. 3, Ch. 482, L. 1981.

Compiler's Comments

1981 Amendment: Inserted "following:" after "rules governing the" in (2) and divided the section into subsections; deleted "rules governing" from the end of (2)(a) and (2)(c); added "and grants" at the end of (2)(b); inserted subsection (2)(c).

Statement of Intent: The statement of intent attached to HB 307 (Ch. 482, L. 1981) provided: "A statement of intent is required for House Bill 307 because it delegates rulemaking authority to the Board of Health and Environmental Sciences for making grants to local governments for the purchase of solid waste management capital equipment. The bill provides the terms of agreement for grants between the department and local governments. It then provides rulemaking authority for eligibility standards and application and award procedures in making capital equipment grants.

It should be noted that Montana in the past has adopted regulatory provisions (Title 16, chapter 14, subchapter 1[, Administrative Rules of Montana]) which provide for the application procedures required for the issuance of planning grants and organizational loans. House Bill 307 will allow the Board of Health and Environmental Sciences to adopt additional rules establishing the procedures required for the department to issue implementation grants to local governments.

Under House Bill 307, the Board of Health and Environmental Sciences will also have the authority to revise existing administrative rules in the area of solid waste grants. These revisions will be needed to allow the department to issue implementation grants to local governments. Thus, the state will be able to pass through implementation funds pursuant to adopted rules, as they become available, to local governments for purposes of establishing waste management systems."

Saving Clause: Section 6, Ch. 482, L. 1981, was a saving section.

Severability: Section 7, Ch. 482, L. 1981, was a severability section.

75-10-107 through 75-10-110 reserved.

75-10-111. State solid waste management plan — hearings and action. (1) A proposed solid waste management plan shall be prepared by the department in conjunction with local governments in the state and any other interested person. After a draft of a proposed solid waste management plan has been prepared, the department shall circulate a copy of the proposed plan to the board of county commissioners in each county in the state, the governing body of every incorporated city or town in the state, any person responsible for the operation of a solid waste management system under the provisions of parts 1 and 2, chapter 10 of this title, the governor, the environmental quality council, and any other interested person for at least 90 days prior to submission of a final proposed solid waste management plan to the board. During the 90-day period for receipt of comments on the draft plan, the department shall hold at least three public hearings around the state on the draft plan.

(2) A final proposed plan shall be prepared based on the comments and objections received at the public hearings and from the persons who have submitted comments on the draft solid waste management plan. The final plan submitted to the board shall include a discussion of all comments and objections received and the reasons why recommendations for changes or amendments to the proposed plan were accepted or rejected. The board shall consider the final proposed solid waste management plan after giving notice and holding at least one public hearing pursuant to the rulemaking procedures outlined in the Montana Administrative Procedure Act.

History: En. 69-4016 by Sec. 6, Ch. 575, L. 1977; R.C.M. 1947, 69-4016.

75-10-112. Powers and duties of local government. A local government may:

(1) plan, develop, and implement a solid waste management system consistent with the state's solid waste plan and propose modifications to the state's solid waste plan;

(2) upon adoption of the state plan by the board, pass an ordinance or resolution to exempt the local jurisdiction from complying with the state plan and subsequent rules implementing the state plan. The ordinance or resolution must include a means to provide solid waste disposal to the citizens of the jurisdiction as required in part 2 of this chapter.

(3) employ appropriate personnel to carry out the provisions of this part;

(4) purchase, rent, or execute leasing agreements for equipment and material necessary for the implementation of a solid waste management system;

(5) cooperate with and enter into agreements with any persons in order to implement an effective solid waste management system;

(6) receive gifts, grants, or donations or acquire by gift, deed, or purchase land necessary for the implementation of any provision of this part;

(7) enforce the rules of the department or a local board of health pertaining to solid waste management through the appropriate county attorney;

(8) apply for and utilize state, federal, or other available money for developing or operating a solid waste management system;

(9) borrow from any lending agency funds available for assistance in planning a solid waste management system;

(10) finance a solid waste management system through the assessment of a tax as authorized by state law;

(11) sell on an installment sales contract or lease to a person all or a portion of a solid waste management system which the local government plans, designs, or constructs, for such consideration and upon such terms as are established by the local governments and consistent with the loan requirements as set forth in this part and rules;

(12) procure insurance against any loss in connection with property, assets, or activities;

(13) mortgage or otherwise encumber all or a portion of a solid waste management system when the local government finds the action is necessary to implement the purposes of this part, as long as the action is consistent with the loan requirements set forth in this part and rules;

(14) hold or dispose of real property and, subject to agreements with lessors and lessees, develop or alter the property by making improvements or betterments for the purpose of enhancing the value and usefulness of the property;

(15) finance, design, construct, own, and operate a solid waste management system or contract for any or all of the aforementioned powers;

(16) control the disposition of solid waste generated within the jurisdiction of a local government;

(17) enter into long-term contracts with local governments and private entities for:

(a) financing, designing, constructing, and operating a solid waste management system;

(b) marketing all raw or processed material recovered from solid waste;

(c) marketing energy products or byproducts resulting from processing or utilization of solid waste;

(18) finance an areawide solid waste management system through the use of any of the sources of revenue available to the implementation entity for public works projects, by the use of revenue bonds issued by the city or county, or by fees levied by a refuse disposal district, whichever is appropriate;

(19) enter into interlocal agreements in order to achieve and implement the powers enumerated in this part.

History: En. 69-4017 by Sec. 7, Ch. 575, L. 1977; R.C.M. 1947, 69-4017.

75-10-113. User's fee assessed. In the event the revenues of a solid waste management system are insufficient to pay the costs, a local government may levy a pro rata fee against the users of the solid waste management district. The pro rata fee shall be based on a per ton, per pound, or volume assessment.

History: En. 69-4018 by Sec. 8, Ch. 575, L. 1977; R.C.M. 1947, 69-4018(6); amd. Sec. 9, Ch. 68, L. 1979.

75-10-114 through 75-10-120 reserved.

75-10-121. Solid waste management loans — requisites. (1) The department may, in the name of the state of Montana, enter into agreements with a local government for loans, subject to any existing contractual obligations of the local government.

(2) A loan agreement must include but not be limited to the following:

(a) the amount of the loan, not to exceed the estimated reasonable amount of the total implementation cost, excluding equipment, construction, or land acquisition as determined by the department;

(b) an agreement by the department to pay part of the amount of the loan to the local government on a timetable as may be agreed upon by the parties;

(c) an agreement by the local government to proceed with the solid waste management system in accordance with plans approved by the department;

(d) an agreement by the local government to commence operation of the solid waste management system on its completion and not to discontinue operations or dispose of the solid waste management system without the approval of the department;

(e) an agreement by the local government to operate and maintain a solid waste management system in accordance with applicable provisions of part 2 of this chapter and rules of the department;

(f) an agreement by the local government to pledge any available sources of revenue to the repayment of loans according to the schedule established by the department. Any revenues from the sale of energy or recycled materials recovered from the solid waste management system and any money received under federal grants for local solid waste management may be used to make such payments. State loan funds for local solid waste management systems may be used only for front-end organizational activities.

(g) an agreement by the local government to establish and maintain adequate financial records for the solid waste management system, including an annual audit of the financial records and transactions covering each fiscal year by a certified public accountant. A copy of each audit must be submitted to the department of administration and the department within 30 days after its completion. Failure of a local government to file a copy of the audit as required by this section shall be grounds for rescinding the loan agreement.

(3) The department may enter into further agreements with a local government and acquire further guarantees or securities as are necessary to implement the provisions of this part.

History: En. 69-4018 by Sec. 8, Ch. 575, L. 1977; R.C.M. 1947, 69-4018(1), (3); amd. Sec. 10, Ch. 68, L. 1979.

75-10-122. Considerations in setting loan priorities. In allocating loan funds to local governments, the department shall establish priority based on a consideration of the plan that:

(1) most fully utilizes private enterprise for planning, design, management, construction, and operation of the facilities required to implement a solid waste management system;

(2) includes the largest population;

(3) is the most financially viable; and

(4) addresses the most pressing environmental and public health concerns.

History: En. 69-4018 by Sec. 8, Ch. 575, L. 1977; R.C.M. 1947, 69-4018(2).

75-10-123. Availability of state loans. Loan money as provided for under this part is available only if the local government is unable to secure adequate financing from other lending institutions or is unable to provide the adequate and necessary bonding for the implementation of a proposed solid waste management system.

History: En. 69-4020 by Sec. 10, Ch. 575, L. 1977; R.C.M. 1947, 69-4020.

75-10-124. Approval, payment, and compliance. (1) A loan agreement entered into pursuant to this part is subject to approval by the department and shall be accounted for on forms prepared by the department.

(2) The department shall establish a schedule of payments to be made by a local government under a loan agreement. Payment shall be made in an amount sufficient to pay the principal and interest cost of the loan obtained from the department.

(3) If a local government fails to comply with the payment schedule established by the department, the state may, after giving 30 days' written notice, withhold an equal share of any state taxes which are otherwise apportioned to the local government.

History: En. 69-4018 by Sec. 8, Ch. 575, L. 1977; R.C.M. 1947, 69-4018(4), (5), (7).

75-10-125. Solid waste management implementation grants. (1) The department, in the name of the state of Montana, may enter into an agreement with a local government for a grant of front-end implementation funds to a local government.

(2) The terms of the agreement, in addition to those prescribed by rules of the board, must include the following:

(a) the amount of the grant, not to exceed 50% of the reasonable purchase price of the capital equipment to be used by the local government in its solid waste management system;

(b) an agreement by the local government:

(i) to operate and maintain a solid waste management system in accordance with plans approved by the department, with applicable provisions of part 2 of this chapter and with rules of the department; and

(ii) not to discontinue operations or terminate a solid waste management system without the approval of the department;

(c) an agreement by the local government that if it trades or sells the capital equipment purchased with grant funds within 5 years of the date of execution of the grant agreement, the local government shall pay to the department an amount equal to the fair market value of the capital equipment on the date of the trade or sale;

(d) certification by the local government that any front-end implementation funds received pursuant to this section will be used solely for the purpose stated in the grant agreement; and

(e) an agreement by the local government to establish and maintain adequate financial records for the solid waste management system, including, within 60 days of the date of termination of the grant agreement, an audit by a certified public accountant of the financial records and transactions. A copy of this audit must be submitted to the department of administration and the department within 30 days of its completion.

(3) In granting front-end implementation funds to local governments, the department may consider only local government applications that include a solid waste management system plan that conforms to the state solid waste management plan and that specify the method by which the solid waste management system will be financed.

(4) No local government may receive a grant of front-end implementation funds under this section unless its solid waste management system plan has been approved by the department and the method of financing the approved solid waste management system has been implemented.

History: En. Sec. 4, Ch. 482, L. 1981.

Compiler's Comments

1981 Title: The title to Ch. 482, L. 1981 (HB 307), read: "An act providing for grants of front-end implementation funds for solid waste management capital equipment; amending sections 75-10-103, 75-10-105, and 75-10-106, MCA."

Codification Instruction: Section 5, Ch. 482, L. 1981, provided: "Section 4 is intended to be codified as an integral part of Title 75, chapter 10, part 1, and the provisions of Title 75, chapter 10, part 1, apply to section 4."

Saving Clause: Section 6, Ch. 482, L. 1981, was a saving section.

Severability: Section 7, Ch. 482, L. 1981, was a severability section.

Part 2

Licensing of Refuse Disposal and Transportation

Part Compiler's Comments

1981 Appropriations Act — Hazardous Waste — Unfunded: Section 19, HB 500 (1981), provided in part: "No funds are appropriated for the hazardous waste program. However, the department may budget amend federal spending authority for the hazardous waste program if these federal funds become available and no additional general fund is required."

75-10-201. Short title. This part may be cited as "The Montana Solid Waste Management Act".

History: En. 69-4001.1 by Sec. 2, Ch. 542, L. 1977; R.C.M. 1947, 69-4001.1.

75-10-202. Legislative findings and policy. It is hereby found and declared that the health and welfare of Montana citizens are being endangered by improperly operated solid waste management systems and by the improper and unregulated disposal of wastes. It is declared the public policy of this state to control solid waste management systems to protect the public health and safety and to conserve natural resources whenever possible.

History: En. Sec. 1, Ch. 35, L. 1965; amd. Sec. 1, Ch. 542, L. 1977; R.C.M. 1947, 69-4001; amd. Sec. 1, Ch. 358, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "hazardous" before "wastes" near the end of the first sentence.

75-10-203. Definitions. Unless the context requires otherwise, in this part the following definitions apply:

(1) "Board" means the board of health and environmental sciences provided for in 2-15-2104.

(2) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(3) "Dispose" or "disposal" means the discharge, injection, deposit, dumping, spilling, leaking, or placing of any solid waste into or onto the land so that the solid waste or any constituent of it may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

(4) "Person" means an individual, firm, partnership, company, association, corporation, city, town, local governmental entity, or any other governmental or private entity, whether organized for profit or not.

(5) "Resource recovery" means the recovery of material or energy from solid waste.

(6) "Resource recovery facility" means a facility at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse.

(7) "Resource recovery system" means a solid waste management system which provides for the collection, separation, recycling, or recovery of solid wastes, including disposal of nonrecoverable waste residues.

(8) "Solid waste" means all putrescible and nonputrescible wastes, including but not limited to garbage; rubbish; refuse; ashes; sludge from sewage treatment plants, water supply treatment plants, or air pollution control facilities; construction and demolition wastes; dead animals, including offal; discarded home and industrial appliances; and wood products or wood byproducts and inert materials. "Solid waste" does not mean municipal sewage, industrial wastewater effluents, mining wastes regulated under the mining and reclamation laws administered by the department of state lands, slash and forest debris regulated under laws administered by the department of state lands, or marketable byproducts.

(9) "Solid waste management system" means a system which controls the storage, treatment, recycling, recovery, or disposal of solid waste.

(10) "Storage" means the actual or intended containment of wastes, either on a temporary basis or for a period of years.

(11) "Transport" means the movement of wastes from the point of generation to any intermediate points and finally to the point of ultimate storage or disposal.

(12) "Treatment" means a method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any solid waste so as to neutralize the waste or so as to render it safer for transport, amenable for recovery, amenable for storage, or reduced in volume.

History: En. Sec. 2, Ch. 35, L. 1965; amd. Sec. 26, Ch. 349, L. 1974; amd. Sec. 3, Ch. 542, L. 1977; R.C.M. 1947, 69-4002; amd. Sec. 2, Ch. 358, L. 1981; amd. Sec. 3, Ch. 529, L. 1981.

Compiler's Comments

1981 Amendments: Chapter 358 deleted "or hazardous waste" after "solid waste" in two places in (3); deleted former subsection (4) defining "hazardous waste"; deleted former subsection (5) defining "hazardous waste management"; deleted "hazardous wastes" after "refuse" in (8); deleted "wood" before "byproducts" at the end of (8); deleted "nonhazardous" after "render it" in (12).

Chapter 529 substituted "the department of state lands" for "the department of natural resources and conservation" near the end of (8). This substitution was made because Ch. 529, L. 1981, transferred the regulation of slash and forest debris to the department of state lands.

Severability: Section 9, Ch. 529, L. 1981, was a severability section.

Effective Date: Section 11, Ch. 529, L. 1981, provided: "This act is effective July 1, 1981."

75-10-204. Powers and duties of department. The department shall adopt rules governing solid waste management systems which shall include but not be limited to:

(1) requirements for the plan of operation and maintenance that must be submitted with an application under this part;

(2) the classification of disposal sites according to the physical capabilities of the site to contain the type of solid waste to be disposed of;

(3) the procedures to be followed in the disposal, treatment, or transport of solid wastes;

(4) the suitability of the site from a public health standpoint when hydrology, geology, and climatology are considered; and

(5) any other factors relating to the sanitary disposal or management of solid wastes.

History: En. Sec. 7, Ch. 35, L. 1965; amd. Sec. 3, Ch. 349, L. 1969; amd. Sec. 109, Ch. 349, L. 1974; amd. Sec. 8, Ch. 542, L. 1977; R.C.M. 1947, 69-4007(1); amd. Sec. 3, Ch. 358, L. 1981.

Compiler's Comments

1981 Amendment: Deleted former subsection (5) concerning reports on operation and maintenance of hazardous waste sites, transportation, and generation.

75-10-205. Inspections. The department has continuing authority and responsibility to inspect a solid waste management system under the provisions of this part. Inspections may be conducted only during reasonable hours and only after presentation of appropriate credentials identifying the inspector as a duly authorized employee of the department.

History: En. Sec. 7, Ch. 35, L. 1965; amd. Sec. 3, Ch. 349, L. 1969; amd. Sec. 109, Ch. 349, L. 1974; amd. Sec. 8, Ch. 542, L. 1977; R.C.M. 1947, 69-4007(2).

75-10-206. Variance. (1) Any person may apply to the board for a variance from rules adopted by the department pursuant to 75-10-204. The board may grant a variance if it finds that:

(a) failure to comply with the rules does not result in a danger to public health or safety; or

(b) compliance with the rules from which a variance is sought would produce hardship without producing benefits to the health and safety of the public that outweigh the hardship.

(2) No variance may be granted pursuant to this section except after a hearing pursuant to the Montana Administrative Procedure Act and consideration by the board of the relative interests of the applicant and owners of the property likely to be affected by the waste disposal system under consideration.

(3) Nothing in this section may be construed as relieving the board from the obligation to comply with the Resource Conservation and Recovery Act of 1976, as amended, or as allowing the board to grant a variance less restrictive than that act.

History: En. Sec. 1, Ch. 563, L. 1981.

Compiler's Comments

1981 Title: The title to Ch. 563, L. 1981 (HB 445), read: "An act to create a procedure to obtain a variance from the rules issued pursuant to the Montana Solid Waste Management Act."

Incorporation into Existing Law: This section was enacted without any codification instruction. The apparent intent of the Legislature was that it become part of Title 75, chapter 10, part 2, and that the provisions in Title 75, chapter 10, part 2, apply to it. The Code Commissioner has codified it accordingly. See 1-11-103(4).

75-10-207 through 75-10-210 reserved.

75-10-211. Repealed. Sec. 30, Ch. 358, L. 1981.

History: En. Sec. 5, Ch. 35, L. 1965; amd. Sec. 2, Ch. 349, L. 1969; amd. Sec. 109, Ch. 349, L. 1974; amd. Sec. 6, Ch. 542, L. 1977; R.C.M. 1947, 69-4005.

75-10-212. Disposal in unauthorized area prohibited — exception. (1) No person may dispose of solid waste except as permitted under this part.

(2) It shall be unlawful to dump or leave any garbage, dead animal, or other debris or refuse:

(a) in or upon any highway, road, street, or alley of this state;

(b) in or upon any public recreational property, highway, street, or alley under the control of the state of Montana or any political subdivision thereof or any officer or agent or department thereof;

(c) within 200 yards of such public highway, road, street, or alley or public recreational property;

(d) on privately owned property where hunting, fishing, or other recreation is permitted, provided this subsection shall not apply to the owner, his agents, or those disposing of debris or refuse with the owner's consent.

History: (1)En. Sec. 3, Ch. 35, L. 1965; amd. Sec. 4, Ch. 542, L. 1977; Sec. 69-4003, R.C.M. 1947; (2)En. Sec. 11-110, Ch. 197, L. 1965; amd. Sec. 1, Ch. 112, L. 1969; Sec. 32-4410, R.C.M. 1947; R.C.M. 1947, 32-4410(1), 69-4003; amd. Sec. 4, Ch. 358, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "or transport hazardous waste" after "dispose of solid waste" in (1).

75-10-213. Unlawful disposition of dead animals — exception. It is unlawful to:

(1) place all or any part of a dead animal in any lake, river, creek, pond, reservoir, road, street, alley, lot, or field;

(2) place all or any part of a dead animal within 1 mile of the residence of any person unless the dead animal or part of a dead animal is burned or buried at least 2 feet underground; or

(3) being the owner, permit all or any part of a dead animal to remain in the places specified in subsections (1) and (2) of this section except as provided in subsection (2) of this section.

History: En. Sec. 95, Ch. 197, L. 1967; R.C.M. 1947, 69-4518; amd. Sec. 11, Ch. 68, L. 1979.

75-10-214. Exclusions — exceptions to exclusions. (1) This part may not be construed to prohibit a person from disposing of his own solid waste upon land owned or leased by that person or covered by easement or permit as long as it does not create a nuisance or public health hazard.

(2) The exclusion contained in subsection (1) of this section does not apply to a division of land of 5 acres or less made after July 1, 1977, which

falls within the definition of subdivision in Title 76, chapter 4, part 1, or the Montana Subdivision and Platting Act in Title 76, chapter 3.

History: En. Sec. 8, Ch. 35, L. 1965; amd. Sec. 4, Ch. 349, L. 1969; amd. Sec. 9, Ch. 542, L. 1977; R.C.M. 1947, 69-4008(1) thru (3), (5); amd. Sec. 12, Ch. 68, L. 1979; amd. Sec. 5, Ch. 358, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "except hazardous waste" after "solid waste" in (1); deleted former subsection (1)(b) relating to a person disposing of his own hazardous waste; deleted former subsection (2) which removed the transportation of marketable hazardous waste from licensing requirements.

75-10-215 through 75-10-220 reserved.

75-10-221. License required — application. (1) Except as provided in 75-10-214, no person may dispose of solid waste or operate a solid waste management system without a license from the department.

(2) The department shall provide application forms for a license as provided in this part.

(3) The application shall contain the name and business address of the applicant, the location of the proposed solid waste management system, a plan of operation and maintenance, and such other information as the department may by rule require.

History: En. Sec. 4, Ch. 35, L. 1965; amd. Sec. 1, Ch. 349, L. 1969; amd. Sec. 109, Ch. 349, L. 1974; amd. Sec. 5, Ch. 542, L. 1977; R.C.M. 1947, 69-4004(1); amd. Sec. 6, Ch. 358, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "hazardous waste" after "solid waste or" in (1); deleted "or transport hazardous waste" after "management system" in (1).

75-10-222. Notification of and validation by local health officer. (1) When the department receives an application for a license pursuant to the provisions of this part, the local health officer in the county where the solid waste management system will be located shall be notified in writing of the application within 15 days after the department has received the application.

(2) If the department decides to issue a license pursuant to the provisions of this part, the department shall notify the local health officer in writing.

(3) A license issued by the department under this section shall not be valid until signed by the local health officer having jurisdiction in the county in which the solid waste management system will be operated.

(4) The local health officer shall, within 15 days after the department has notified the local health officer of its decision to issue a license under this part, make a final decision on whether the license will be validated.

History: En. Sec. 4, Ch. 35, L. 1965; amd. Sec. 1, Ch. 349, L. 1969; amd. Sec. 109, Ch. 349, L. 1974; amd. Sec. 5, Ch. 542, L. 1977; R.C.M. 1947, 69-4004(part).

75-10-223. Refusal by local health officer — appeal to board. (1) The local health officer may only refuse to validate a license issued under this part upon a finding that the requirements of this part and the rules implementing this part cannot be satisfied. If the local health officer refuses to validate the license, he shall notify the applicant, the department, and any other interested person in writing.

(2) The applicant or any person aggrieved by the decision of the local health officer not to validate a license may appeal the decision to the board

within 30 days after receiving written notice of the local health officer's decision.

(3) The hearing before the board shall be held pursuant to the contested case provisions of the Montana Administrative Procedure Act.

History: **En. Sec. 4, Ch. 35, L. 1965; amd. Sec. 1, Ch. 349, L. 1969; amd. Sec. 109, Ch. 349, L. 1974; amd. Sec. 5, Ch. 542, L. 1977; R.C.M. 1947, 69-4004(part).**

75-10-224. Revocation or denial of license by department. The department may deny or revoke a license to operate a solid waste management system after giving the applicant and the local health officer written notice and an opportunity for a hearing before the board. The decision to deny or revoke a license may be made only after a finding that a solid waste management system cannot be operated or is not being operated in compliance with this part or a rule or order issued pursuant to this part. The hearing held before the board on a denial or revocation shall be held pursuant to the provisions of the Montana Administrative Procedure Act.

History: **En. Sec. 6, Ch. 35, L. 1965; amd. Sec. 7, Ch. 542, L. 1977; R.C.M. 1947, 69-4006.**

75-10-225. Repealed. Sec. 30, Ch. 358, L. 1981.

History: **En. Sec. 8, Ch. 35, L. 1965; amd. Sec. 4, Ch. 349, L. 1969; amd. Sec. 9, Ch. 542, L. 1977; R.C.M. 1947, 69-4008(4).**

75-10-226 through 75-10-230 reserved.

75-10-231. Actions. The department may, through the attorney general or appropriate county attorney, initiate and maintain in district court enforcement actions as provided in this part, including actions to collect a criminal penalty or to enjoin the operation of a solid waste management system that is in violation of this part or a rule adopted by the department or order issued as provided in this part.

History: **En. Sec. 7, Ch. 35, L. 1965; amd. Sec. 3, Ch. 349, L. 1969; amd. Sec. 109, Ch. 349, L. 1974; amd. Sec. 8, Ch. 542, L. 1977; R.C.M. 1947, 69-4007(3).**

75-10-232. Penalty for violations. (1) A person violating this part or regulations prescribed by the department under this part, except 75-10-212(2), is guilty of a misdemeanor and upon conviction shall be fined not less than $50 or more than $500.

(2) Each day upon which a violation occurs is a separate violation.

History: **Ap. p. Sec. 9, Ch. 35, L. 1965; amd. Sec. 5, Ch. 349, L. 1969; amd. Sec. 109, Ch. 349, L. 1974; amd. Sec. 10, Ch. 542, L. 1977; Sec. 69-4009, R.C.M. 1947; Ap. p. Sec. 96, Ch. 197, L. 1967; amd. Sec. 108, Ch. 349, L. 1974; amd. Sec. 3, Ch. 273, L. 1975; Sec. 69-4519, R.C.M. 1947; R.C.M. 1947, 69-4009, 69-4519(3), (4); amd. Sec. 13, Ch. 68, L. 1979; amd. Sec. 7, Ch. 358, L. 1981.**

Compiler's Comments

1981 Amendment: Deleted former subsection (1)(b) which provided a penalty for violations in storing, treating, transporting, or disposing of hazardous waste.

75-10-233. Dumping penalty — enforcement. Any person found guilty of a violation of 75-10-212(2) shall be fined in the sum not exceeding $100 or imprisoned in the county jail for a period not exceeding 30 days or be punished by both such fine and imprisonment, in the discretion of the court. The provisions of 75-10-212(2) shall be enforced by all highway patrolmen, sheriffs, policemen, and all other enforcement agencies and officers of the state of Montana. In addition, game wardens shall have the right to enforce the provisions of 75-10-212(2) on public recreational property and on private property where public recreation is permitted.

History: En. Sec. 11-110, Ch. 197, L. 1965; amd. Sec. 1, Ch. 112, L. 1969; R.C.M. 1947, 32-4410(2), (3).

Part 3

Detachable Beverage Container Openers

Part Compiler's Comments

1981 Title: The title to Ch. 185, L. 1981 (HB 468), read: "An act to prohibit the sale of certain types of containers; and to provide an effective date."

Interim Study Committee Bill: Chapter 185, L. 1981 (HB 468), was introduced at the request of the Study Committee on Container Deposits. See committee report, Legislative Council, 1980.

Effective Date: Section 4, Ch. 185, L. 1981, provided: "This act is effective January 1, 1982."

75-10-301. Definitions. As used in 75-10-302, the following definitions apply:

(1) "Beverage" means beer or other malt beverage, mineral water, soda water, tea, or carbonated soft drink in liquid form and intended for human consumption.

(2) "Container" means an individual, separate, sealed metal can containing a beverage.

History: En. Sec. 1, Ch. 185, L. 1981.

75-10-302. Detachable opening prohibited. No person may sell or offer for sale at retail in this state any metal beverage container so designed and constructed that a part of the container is detachable when opening the container.

History: En. Sec. 2, Ch. 185, L. 1981.

75-10-303. Violations — penalty. A violation of 75-10-302 is a misdemeanor and is punishable as provided in 46-18-212. Each day on which a violation occurs is a separate offense.

History: En. Sec. 3, Ch. 185, L. 1981.

Part 4

Hazardous Waste Management

Part Compiler's Comments

1981 Title: The title to Ch. 358, L. 1981 (SB 212), read: "An act providing a program of hazardous waste management separate from the nonhazardous solid waste management program in Montana; amending sections 75-10-202 through 75-10-204, 75-10-212, 75-10-214, 75-10-221, and 75-10-232, MCA; and repealing sections 75-10-211 and 75-10-225, MCA."

Existing Rules, Orders, Permits, Legal Proceedings: Section 29, Ch. 358, L. 1981, provided: "(1) All existing rules of the department not inconsistent with the provisions of this act relating to subjects embraced within this act remain in full force and effect until expressly repealed, amended, or superseded by the department.

(2) All orders entered, permits granted, and pending legal proceedings instituted by the department relating to subjects embraced within this act remain unimpaired and in full force and effect until superseded by actions taken by the department under this act."

75-10-401. Short title. This part shall be known and may be cited as the "Montana Hazardous Waste Act".

History: En. Sec. 8, Ch. 358, L. 1981.

75-10-402. Findings and purpose. (1) The legislature finds that the safe and proper management of hazardous wastes, the permitting of hazardous waste facilities, and the siting of such facilities are environmental issues that should properly be addressed and controlled by the state rather than by the federal government.

(2) It is the purpose of this part and it is the policy of this state to protect the public health and safety, the health of living organisms, and the environment from the effects of the improper, inadequate, or unsound management of hazardous wastes; to establish a program of regulation over the generation, storage, transportation, treatment, and disposal of hazardous wastes; to assure the safe and adequate management of hazardous wastes within this state; and to authorize the department to adopt, administer, and enforce a hazardous waste program pursuant to the federal Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901 - 6987), as amended.

History: En. Sec. 9, Ch. 358, L. 1981.

75-10-403. Definitions. Unless the context requires otherwise, in this part the following definitions apply:

(1) "Board" means the board of health and environmental sciences provided for in 2-15-2104.

(2) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(3) "Dispose" or "disposal" means the discharge, injection, deposit, dumping, spilling, leaking, or placing of any hazardous waste into or onto the land or water so that the hazardous waste or any constituent of it may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

(4) "Facility" or "hazardous waste management facility" means all contiguous land and structures, other appurtenances, and improvements on the land used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units.

(5) "Generation" means the act or process of producing waste material.

(6) "Generator" means any person, by site, whose act or process produces hazardous waste or whose act first causes a hazardous waste to become subject to regulation under this part.

(7) (a) "Hazardous waste" means a waste or combination of wastes that, because of its quantity, concentration, or physical, chemical, or infectious characteristics, may:

(i) cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or

(ii) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of or otherwise managed.

(b) Hazardous wastes do not include those substances governed by Title 82, chapter 4, part 2.

(8) "Hazardous waste management" means the management of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous wastes.

(9) "Manifest" means the shipping document originated and signed by the generator and which is used to identify the hazardous waste, its quantity, origin, and destination during its transportation.

(10) "Person" means the United States, an individual, firm, trust, estate, partnership, company, association, corporation, city, town, local governmental entity, or any other governmental or private entity, whether organized for profit or not.

(11) "Storage" means the actual or intended containment of wastes, either on a temporary basis or for a period of years.

(12) "Transportation" means the movement of hazardous wastes from the point of generation to any intermediate points and finally to the point of ultimate storage or disposal.

(13) "Transporter" means a person engaged in the offsite transportation of hazardous waste by air, rail, highway, or water.

(14) "Treatment" means a method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize the waste or so as to render it nonhazardous, safer for transportation, amenable for recovery, amenable for storage, or reduced in volume.

History: En. Sec. 10, Ch. 358, L. 1981.

75-10-404. Powers of department. (1) The department may:

(a) administer and enforce the provisions of this part, rules implementing this part, and orders and permits issued pursuant to this part;

(b) conduct and publish studies on hazardous wastes and hazardous waste management;

(c) initiate, conduct, and support research, demonstration projects, and investigation, as its resources may allow, and coordinate state agency research programs pertaining to hazardous waste management;

(d) accept and administer grants from the federal government and from other sources, public and private.

(2) The department shall integrate all provisions of this part with other laws administered by the department to avoid unnecessary duplication. Furthermore, the department shall coordinate its activities under this part with the program administered by the department of agriculture under the Montana Pesticides Act, the programs administered by the department of state lands related to mining and mine reclamation, the program administered by the department of public service regulation related to hazardous material transportation, and provisions of the Montana Major Facility Siting Act administered by the department of natural resources and conservation. Such integration and coordination shall be effected only to the extent that it can be done in a manner consistent with the goals and policies of this part and the other laws referred to in this section.

History: En. Sec. 11, Ch. 358, L. 1981.

75-10-405. Administrative rules. The department may adopt, amend, or repeal rules governing hazardous waste, including but not limited to the following:

(1) identification and classification of those hazardous wastes subject to regulation and those that are not;

(2) requirements for the proper treatment, storage, transportation, and disposal of hazardous waste;

(3) requirements for siting, design, operation, maintenance, monitoring, inspection, closure, postclosure, and reclamation of hazardous waste management facilities;

(4) requirements for the issuance, denial, renewal, modification, and revocation of permits for hazardous waste management facilities and the assessment of permit fees for these facilities;

(5) requirements for manifests and the manifest system for tracking hazardous waste and for reporting and recordkeeping by generators, transporters, and owners and operators of hazardous waste management facilities;

(6) requirements for training of facility personnel and for financial assurance of facility owners and operators;

(7) requirements for registration of generators and transporters; and

(8) other rules which are necessary to obtain and maintain authorization under the federal program, except that the department may not adopt rules under this part that are more restrictive than those promulgated by the federal government under the Resource Conservation and Recovery Act of 1976, as amended.

History: En. Sec. 12, Ch. 358, L. 1981.

Compiler's Comments

Statement of Intent: The statement of intent attached to SB 212 (Ch. 358, L. 1981) provided: "A statement of intent is required for this bill because it delegates rulemaking and licensing authority to the Department of Health and Environmental Sciences. Senate Bill 212 is intended to separate from the existing Montana Solid Waste Management Act (Title 75, chapter 10, part 2) all references to the treatment, storage, disposal, generation, and transportation of hazardous wastes and place the statutes regulating hazardous wastes into a separate part of the code. The specific objective and intent of the bill is to clarify and extend state rulemaking authority in order to be totally authorized by the Administrator of the Environmental Protection Agency (EPA) to operate a hazardous waste program in Montana which is equivalent to and in lieu of the federal hazardous waste program established by Subtitle C of the Resource Conservation and Recovery Act (RCRA) of 1976, P.L. 94-580, as amended.

The rules promulgated and permitting procedures adopted under this bill shall meet minimum standards under RCRA and shall not be more restrictive than those analogous provisions in which EPA has adopted regulations under RCRA. In the limited situations in which no federal regulations have been adopted or the drafting of regulations has been purposefully left to the states, the Department must be guided and constrained by the purpose set forth in Section 9 [75-10-402], the powers of the Department noted in Section 11 [75-10-404], the rulemaking guidelines of Section 12 [75-10-405], and the minimum requirements of RCRA.

It should be noted that Montana has enacted regulatory provisions under existing Title 75, chapter 10, part 2, the Solid Waste Management Act, and has sufficient coverage of hazardous waste responsibilities enabling the state to qualify for interim authorization from EPA to carry out a program in lieu of the federal RCRA hazardous waste program. This bill grants the Department authority to make additional adjustments, through rulemaking, which will bring its program affecting generators and transporters of hazardous wastes, the universe of hazardous waste, inspection and sampling, definitions, enforcement alternatives and penalties into equivalency and consistency with federal requirements.

Senate Bill 212 intends that the Department of Health and Environmental Sciences shall have authority to require by rule, in accordance with the Montana Administrative Procedure Act, that generators of hazardous wastes, prior to transporting hazardous wastes or offering them for transport offsite, must perform certain packaging, labeling, marking and placarding of the wastes in a manner equivalent to the provisions of federal regulations contained in 40 CFR 262.30 through 262.33. The Department shall have authority under the bill to adopt rules setting penalties or fines for generators of hazardous wastes that set upper limitations which are no less than the amount of $10,000 per day, as required for final authorization under the federal program. Furthermore, Senate Bill 212 allows additional rulemaking to clarify the Department's authority to make inspections of and take samples from generators of hazardous wastes in a manner equivalent to federal inspection authority provided in Section 3007 of RCRA and federal rules promulgated under RCRA.

Under existing law, the Department has promulgated rules which define a broad spectrum of hazardous wastes (the universe of hazardous wastes) by specific listing and by characteristics; which list exclusions from the definition of hazardous waste; which define terms necessary to implement the hazardous waste program; which establish manifest requirements specifying how a hazardous waste is documented from time of generation through transport to time of disposal by the operator of a treatment, storage or disposal facility; which set recordkeeping and emergency cleanup procedures for transporters of hazardous wastes; which establish licensure procedures and standards for operators of hazardous waste treatment storage and disposal systems; and which provide enforcement alternatives for treatment, storage and disposal facility licenses. All of the existing rules are equivalent to and consistent with the federal program established by RCRA; in many instances, EPA rules have been incorporated by reference.

Under Senate Bill 212, the Department will have authority to amend and revise these rules, and to adopt new rules, in accordance with the Montana Administrative Procedure Act, which may be needed to meet changing minimum federal standards for a hazardous waste program authorized for state control under RCRA, as amended. Thus, Montana will be able to continue to maintain federal authorization for an independent hazardous waste program, equivalent to the federal program, but operated by the Department."

75-10-406. Permits. (1) No person may construct or operate a hazardous waste management facility without first obtaining a permit from the department for such facility, except that the department may, by rule, prescribe conditions under which specified hazardous wastes or specified quantities of hazardous waste may be disposed of at solid waste disposal sites licensed by the department pursuant to Title 75, chapter 10, part 2.

(2) Any person who wishes to construct or operate a hazardous waste management facility shall apply to the department for a permit on forms provided by the department. An application must contain, at a minimum, the name and business address of the applicant, the location of the proposed facility, a plan of operation and maintenance, and a description of pertinent site characteristics.

(3) A permit may be issued for a period specified by the department and shall be subject to renewal by the department upon a showing that the facility has been operated in accordance with the terms of the permit and the rules applicable to such facility and in compliance with the provisions of this part and any applicable order of the board or department.

(4) Any permit issued is subject to revocation by the department for failure of the permittee to comply with the terms and conditions of the permit, the department rules, an order of the board or the department, or the provisions of this part. Any person who is denied a permit by the department or who has such permit revoked or modified shall be afforded an opportunity for a hearing before the board upon written application made within 30 days after service of notice of such denial, revocation, or modification by mail. Service by mail is complete upon mailing.

(5) Notwithstanding any other provisions of this part, the department may, in the event of an imminent and substantial danger to public health or the environment, issue a temporary emergency permit to any person for treatment, storage, or disposal of hazardous waste or to any facility to handle hazardous waste not covered by the existing facility permit. Such emergency permits may be oral or written, may not exceed 90 days in duration, and may be terminated by the department at any time prior to 90 days.

(6) The department may, as it considers appropriate, grant permits by rule to classes or categories of hazardous waste management facilities where the facility owner or operator is already licensed or permitted by the department pursuant to other state environmental statutes or where an interim period exists until final administrative disposition of a permit application is made.

History: En. Sec. 13, Ch. 358, L. 1981.

75-10-407. Concurrent permit and major facility siting decisions. If it is determined that an application for a certificate under the Montana Major Facility Siting Act, Title 75, chapter 20, will result in the generation, transportation, storage, or disposal of hazardous wastes as defined in 75-10-403, the department shall conduct its review under the provisions of this part concurrently with the studies of air and water quality conducted under the provisions of the Montana Major Facility Siting Act. A decision to grant or deny a permit for the treatment, storage, or disposal of hazardous wastes under the provisions of 75-10-406 is appealable concurrently with and subject to the same procedures established for the appeal of the department's air and water quality certification decision under the Montana Major Facility Siting Act. If the initial permit has been granted as specified in this section, all renewals or modifications of a permit or enforcement actions concerning alleged violations of the permit and the provisions of this part shall be conducted pursuant to the procedures and enforcement provisions established in this part.

History: En. Sec. 14, Ch. 358, L. 1981.

75-10-408. Variances — renewals. (1) A person who is a generator or transporter of hazardous wastes or who owns or operates a hazardous waste management facility may apply to the board for a variance or partial variance from the application of or compliance with any requirement of this part or any rule adopted under this part. The board may grant a variance or partial variance if it finds that:

(a) the applicant's actions or proposed actions regarding generation, transportation, treatment, storage, or disposal of hazardous wastes do not constitute a danger to public health or safety or cause substantially adverse environmental effects; and

(b) the application of or compliance with the requirement or rule would produce unreasonable hardship without equal or greater benefits to the public.

(2) No variance or partial variance may be granted except after public hearing on due notice and until the board has considered the relative interests of the applicant, other persons specifically affected, and the general public.

(3) No variance or partial variance may be granted for a period to exceed 1 year, but the variance or partial variance may be renewed for like periods if no complaint is made to the board because of it or if, after the complaint has been made and duly considered at a public hearing held by the board on due notice, the board finds that renewal is justified. No renewal may be granted except on application therefor. An application for renewal shall be

made in the manner and upon such notice as specified in rules promulgated under this part. A renewal pursuant to this subsection shall be on the same grounds and subject to the same limitations and requirements as provided in subsection (1).

(4) A variance, partial variance, or renewal thereof is not a right of the applicant or holder thereof but shall be granted at the discretion of the board. However, a person adversely affected by a variance, partial variance, or renewal granted by the board may obtain judicial review thereof as provided by the judicial review of contested case provisions of the Montana Administrative Procedure Act.

(5) Nothing in this section and no variance, partial variance, or renewal granted pursuant to this section may be construed to prevent or limit the application of the emergency provisions and procedures of 75-10-415.

(6) Under no conditions may a variance be granted by the board that would result in a less stringent requirement or degree of control than would be imposed by the applicable federal regulations adopted under the federal Resource Conservation and Recovery Act.

History: **En. Sec. 15, Ch. 358, L. 1981.**

75-10-409. Compliance monitoring and reporting. The department may, as a condition of a permit, require the owner or operator of a facility to install equipment, collect and analyze samples, and maintain records in order to monitor and demonstrate compliance with this part, rules adopted under this part, any order of the board or department, and permit conditions. The department may require the owner or operator of a facility to submit reports on such compliance monitoring activities, including notice to the department of any noncompliance with permit conditions, rules adopted under this part, the provisions of this part, or any orders of the department or board.

History: **En. Sec. 16, Ch. 358, L. 1981.**

75-10-410. Inspections — sampling. (1) An employee or agent of the department, at any reasonable time and upon presentation of credentials, may enter upon and inspect any property, premises, or place at which hazardous wastes are or have been generated, stored, treated, disposed of, or loaded for transportation or any property, premises, or place at which records pertinent to such hazardous waste activities are maintained. The employee or agent of the department may have access to and may copy any records relating to such hazardous wastes for the purposes of developing rules under this part or enforcing the provisions of this part, rules adopted under this part, or a permit or an order issued under this part.

(2) In the course of an inspection under this section, the employee or agent of the department may take samples of any wastes, including samples from any vehicle in which wastes are transported, or samples of any containers or labeling for such wastes. If the employee or agent of the department takes a sample of any hazardous waste or suspected hazardous waste, he shall, prior to leaving the premises, give to the owner, operator, or agent in charge a receipt describing the sample taken and, if requested, a portion of each such sample equal in volume or weight to the portion retained. If any

analysis is made of such samples, a copy of the results of such analysis must be furnished to the owner, operator, or agent in charge.

History: **En. Sec. 17, Ch. 358, L. 1981.**

75-10-411. Hazardous waste site inventory. (1) The department is authorized to conduct an inventory of sites and locations in the state where hazardous wastes have been stored or disposed of at any time.

(2) If the department determines that the presence of a hazardous waste or the release of the waste or any waste constituent at any such site may present a substantial hazard to public health or the environment, it may issue an order requiring the owner or operator of the facility or site to conduct reasonable monitoring, testing, analysis, and reporting with respect to the site in order to ascertain the nature and extent of the hazard.

(3) An order issued under subsection (2) must require that the person to whom the order is issued submit to the department within 30 days a proposal for carrying out the required monitoring, testing, analysis, and reporting.

(4) If the department determines that no owner or operator is able to conduct monitoring, testing, and analysis in a satisfactory manner, the department may conduct such activities.

(5) For the purposes of carrying out this section, the department may exercise the powers set forth in 75-10-410.

History: **En. Sec. 18, Ch. 358, L. 1981.**

75-10-412. State hazardous waste facilities. The department may, if it considers such action to be necessary, establish, maintain, and operate state hazardous waste management facilities to provide for the treatment, storage, or disposal of hazardous wastes. The department may acquire interests in real property by gift, purchase, lease, or other means in order to develop any such facility. Such a facility may be operated and maintained by the department directly or through agreement with public or private persons. A state facility must meet all applicable requirements for a hazardous waste management facility under this part.

History: **En. Sec. 19, Ch. 358, L. 1981.**

75-10-413. Administrative enforcement. (1) When the department believes that a violation of this part, a rule adopted under this part, or a permit provision has occurred, it may serve written notice of the violation by certified mail on the alleged violator or his agent. The notice must specify the provision of this part, the rule, or the permit provision alleged to be violated and the facts alleged to constitute a violation and may include an order to take necessary corrective action within a reasonable period of time stated in the order. The order becomes final unless, within 30 days after the notice is served, the person named requests in writing a hearing before the board. On receipt of the request, the board shall schedule a hearing. Service by mail is complete on the date of mailing.

(2) If, after a hearing held under subsection (1), the board finds that a violation has occurred, it shall either affirm or modify the department's order previously issued. An order issued by the department or by the board may prescribe the date by which the violation must cease and may prescribe time

limits for particular action. If, after hearing, the board finds no violation has occurred, it shall rescind the department's order.

(3) Instead of issuing an order pursuant to subsection (1), the department may either:

(a) require the alleged violator to appear before the board for a hearing at a time and place specified in the notice and answer the charges complained of; or

(b) initiate action under 75-10-414, 75-10-417, or 75-10-418.

(4) This section does not prevent the board or department from making efforts to obtain voluntary compliance through warning, conference, or any other appropriate means.

History: **En. Sec. 20, Ch. 358, L. 1981.**

75-10-414. Injunctions. The department may institute and maintain in the name of the state actions for injunctive relief as provided in Title 27, chapter 19, to:

(1) immediately restrain any person from engaging in any unauthorized activity which is endangering or causing damage to public health or the environment; or

(2) enjoin a violation of this part, a rule adopted under this part, an order of the department or the board, or a permit provision without the necessity of prior revocation of the permit.

History: **En. Sec. 21, Ch. 358, L. 1981.**

75-10-415. Imminent hazard. Upon receipt of evidence that the handling, storage, treatment, transportation, or disposal of any hazardous waste may present an imminent and substantial danger to public health or the environment, the department may commence legal proceedings to immediately restrain or enjoin any person contributing to such handling, storage, treatment, transportation, or disposal from engaging in such activities or take such other action as may be necessary.

History: **En. Sec. 22, Ch. 358, L. 1981.**

75-10-416. Cleanup orders. The department may issue a cleanup order to any person who has discharged, deposited, or spilled any hazardous waste into or onto any land or water in an unlawful or unapproved manner or who has discharged, deposited, or spilled any material or substance into or onto any land or water so as to result in unlawful or unapproved hazardous waste disposal. The order shall direct the person to clean up and remove the waste, treat it so as to render it nonhazardous, or to take such other actions as may be considered reasonable by the department.

History: **En. Sec. 23, Ch. 358, L. 1981.**

75-10-417. Civil penalties. (1) Any person who violates any provision of this part, a rule adopted under this part, an order of the department or the board, or a permit is subject to a civil penalty not to exceed $10,000. Each day of violation constitutes a separate violation.

(2) The department may institute and maintain in the name of the state any enforcement proceedings under this section. Upon request of the department, the attorney general or the county attorney of the county of violation

shall petition the district court to impose, assess, and recover the civil penalty. Any civil penalty collected under this section is in lieu of the criminal penalty provided for in 75-10-418.

(3) Action under this section does not bar enforcement of this part, rules adopted under this part, orders of the department or the board, or permits by injunction or other appropriate remedy.

(4) Money collected under this section shall be deposited in the state general fund.

History: En. Sec. 24, Ch. 358, L. 1981.

75-10-418. Criminal penalties. (1) Any person who knowingly transports any hazardous waste to an unpermitted facility; who treats, stores, or disposes of hazardous waste without a permit; or who makes any false statement or representation in any application, label, manifest, record, report, permit, or other document filed or maintained as required by the provisions of this part or rules made under this part is subject to a fine not to exceed $10,000 for each violation or imprisonment not to exceed 6 months, or both. A person convicted for a violation of this section after a first conviction under this section is subject to a fine not to exceed $20,000 for each violation or imprisonment not to exceed 1 year, or both. Each day of violation constitutes a separate violation.

(2) Action under this section does not bar enforcement of this part, rules made under this part, orders of the department or the board, or permits by injunction or other appropriate remedy.

(3) Money collected under this section shall be deposited in the state general fund.

History: En. Sec. 25, Ch. 358, L. 1981.

75-10-419. Department designated agency for federal program participation — interstate cooperation. (1) The department is designated as the official agency for the state for all purposes of the federal Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901 through 6987), as amended, and for the purpose of such other state or federal legislation as has or may be enacted after October 1, 1981, to assist in the management of hazardous wastes.

(2) The legislature of this state encourages cooperative activities by the department with other states for the improved management of hazardous wastes and, so far as is practicable, encourages the adoption of uniform state laws relating to the management of hazardous wastes and compacts between this and other states for the improved management of hazardous wastes. The department may enter into agreements with the responsible authorities of the United States and of other states, subject to approval by the governor, relative to policies, methods, means, and procedures to be employed in the management of hazardous wastes not inconsistent with the provisions of this part and may carry out the agreements.

History: En. Sec. 26, Ch. 358, L. 1981.

75-10-420. Venue for legal proceedings. All legal proceedings affecting hazardous waste management facilities in the state shall be brought in the county in which the facility is located.

History: En. Sec. 27, Ch. 358, L. 1981.

75-10-421. Construction in event of conflict — remedies cumulative. (1) The provisions of this part and rules promulgated pursuant to this part govern if they conflict with other provisions of Montana law or any action taken by the department under such provisions.

(2) The remedies provided for in this part are cumulative with other remedies provided by law.

History: En. Sec. 28, Ch. 358, L. 1981.

Part 5

Motor Vehicle Recycling and Disposal

75-10-501. Definitions. Unless the context requires otherwise, in this part the following definitions apply:

(1) "Board" means the board of health and environmental sciences provided for in 2-15-2104.

(2) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(3) "Junk vehicle" means a discarded, ruined, wrecked, or dismantled vehicle, including component parts, or a vehicle substantially changed in form by removal of parts or component materials and which is not lawfully and validly licensed and remains inoperative or incapable of being driven.

(4) "Motor vehicle graveyard" means a collection point established by a county for junk motor vehicles prior to their disposal.

(5) "Motor vehicle wrecking facility" means:

(a) a facility buying, selling, or dealing in four or more vehicles per year, of a type required to be licensed, for the purpose of wrecking, dismantling, disassembling, or substantially changing the form of the motor vehicle; or

(b) a facility which buys or sells integral secondhand parts or component material thereof, in whole or in part, and deals in secondhand motor vehicle parts. A facility which buys or sells integral secondhand parts or component material of a motor vehicle, in whole or in part, is a motor vehicle wrecking facility whether or not the buying or selling price is based upon weight or any other type of classification. The term does not include a garage where wrecked or disabled motor vehicles are temporarily stored for a reasonable period of time for inspection, repairs, or subsequent removal to a junkyard.

(6) "Person" means any individual, firm, partnership, company, association, corporation, city, town, local governmental entity, or any other governmental or private entity, whether organized for profit or not.

(7) "Public view" means any point 6 feet above the surface of the center of a public road from which junk vehicles can be seen.

(8) "Shielding" means the construction or use of fencing or manmade or natural barriers to conceal junk vehicles from public view.

History: En. Sec. 1, Ch. 410, L. 1973; amd. Sec. 1, Ch. 251, L. 1977; amd. Sec. 1, Ch. 252, L. 1977; R.C.M. 1947, 69-6801.

75-10-502. Possession of junk vehicles as prima facie evidence of motor vehicle wrecking facility. Possession at a single location of four or more junk vehicles of a type required to be licensed is prima facie evidence that the possessor is operating a motor vehicle wrecking facility.

History: En. Sec. 3, Ch. 410, L. 1973; amd. Sec. 3, Ch. 252, L. 1977; R.C.M. 1947, 69-6803.

75-10-503. Adoption of rules. The department shall adopt rules necessary for the administration of this part, except 75-10-520, including but not limited to rules pertaining to:

(1) the establishment, control, operation, and licensing of motor vehicle wrecking facilities and graveyards;

(2) the control of junk vehicles in locations other than motor vehicle wrecking facilities and graveyards;

(3) the inspection and evaluation of premises and records subject to or required by this part;

(4) the development of budget and fiscal forms and procedures for counties;

(5) the review, approval, and control procedures for county motor vehicle graveyards developed under this part; and

(6) the shielding of a junk vehicle and motor vehicle wrecking facility and graveyard from public view. The department may not adopt a rule which requires the construction of a fence or manmade barrier which would be in excess of 12 feet in height.

History: En. Sec. 8, Ch. 410, L. 1973; amd. Sec. 6, Ch. 252, L. 1977; R.C.M. 1947, 69-6808(part).

Compiler's Comments

Relationship of part to new section. The words "except 75-10-520" were added to this section by the code commissioner to make it clear that 75-10-520 is not intended as an integral part of Title 75, chapter 10, part 5. Section 75-10-520 was enacted by Sec. 1, Ch. 244, L. 1979, without a codification instruction. It is codified in Title 75, chapter 10, part 5, for code user convenience. Penalty provisions and provisions relating to powers and duties of the department of health and environmental sciences have no application to 75-10-520.

75-10-504. Shielding — new facility. A new motor vehicle wrecking facility or graveyard site may not be approved for use or licensed if the proposed facility cannot be shielded from public view. The prohibition concerning approval of a new motor vehicle wrecking facility site does not apply to a facility site that has been used as such within the preceding 18 months.

History: En. Sec. 8, Ch. 410, L. 1973; amd. Sec. 6, Ch. 252, L. 1977; R.C.M. 1947, 69-6808(part).

75-10-505 through 75-10-510 reserved.

75-10-511. Motor vehicle wrecking facility and motor vehicle graveyard licenses. (1) A person may not conduct, maintain, or operate a motor vehicle wrecking facility or motor vehicle graveyard without a license issued by the department.

(2) Application for the license shall be made on forms furnished by the department.

(3) An annual fee of $50 shall be paid to the department for the license or quarterly prorated for new facilities.

(4) A motor vehicle graveyard is excluded from paying the annual license fee but must meet all other requirements of the part.

(5) A license shall be displayed in a prominent place in the licensed facility or graveyard.

(6) The license expires on December 31 of the year issued.

(7) If a motor vehicle wrecking facility ceases to do business, the license shall be surrendered to the department. The license is not transferable.

History: En. Sec. 2, Ch. 410, L. 1973; amd. Sec. 2, Ch. 252, L. 1977; R.C.M. 1947, 69-6802(1) thru (6).

75-10-512. Records required of facilities. (1) Every motor vehicle wrecking facility shall maintain books or files in which are kept a record and description of every junk vehicle obtained by it, together with the name of the person from whom the vehicle was purchased.

(2) This record shall also contain:

(a) the certificate of title or sheriff's certificate of sale or a written release from the former owner;

(b) the name of the state where the vehicle was last registered;

(c) the number of the last license plate;

(d) the make of the vehicle;

(e) the motor or identification number or serial number;

(f) the date purchased;

(g) the disposition of motor and chassis.

History: **En. Sec. 4, Ch. 410, L. 1973; R.C.M. 1947, 69-6804(1), (2).**

75-10-513. Disposal of junk vehicles — fees and records. When a motor vehicle wrecking facility submits a junk vehicle to the disposal program, it shall pay a disposal fee of $2 for each vehicle submitted and it shall surrender to the department all records maintained as required in 75-10-512, and the vehicle is then the property of the state.

History: **En. Sec. 4, Ch. 410, L. 1973; R.C.M. 1947, 69-6804(3).**

75-10-514. Denial, suspension, or revocation of license — grounds. The department may deny, suspend, or revoke a motor vehicle wrecking facility's license when it proves the business:

(1) sold or otherwise disposed of a motor vehicle, trailer, or any part thereof when it knew the vehicle or part was stolen or was appropriated without the consent of the owner;

(2) committed forgery on a certificate of title covering a vehicle that has been reassembled from parts obtained from the disassembling of other vehicles;

(3) committed any illegal act or omission which has caused loss as the result of a sale of a motor vehicle, trailer, or part thereof;

(4) failed to comply with this part or with a rule of the department;

(5) obtained a license fraudulently.

History: **En. Sec. 9, Ch. 410, L. 1973; R.C.M. 1947, 69-6809.**

75-10-515. Appeals. A decision by the department to issue, deny, or revoke a motor vehicle wrecking facility or graveyard license may be appealed to the board within 30 days after receipt of official notice of the department's decision.

History: **En. Sec. 2, Ch. 410, L. 1973; amd. Sec. 2, Ch. 252, L. 1977; R.C.M. 1947, 69-6802(7).**

75-10-516 through 75-10-519 reserved.

75-10-520. Disposal of damaged vehicle when insurance company settles at total loss. An insurance company settling an insurance claim on a damaged motor vehicle as a total loss less salvage may dispose of the motor vehicle at a motor vehicle wrecking facility only if it is licensed under the provisions of 75-10-511.

History: **En Sec. 1, Ch. 244, L. 1979.**

75-10-521. Motor vehicle graveyards — consolidation — budget. (1) Each county shall acquire, develop, and maintain property for free motor vehicle graveyards. The property may be acquired by purchase, lease, or otherwise.

(2) As an alternative, the county may contract for the maintenance and operation of a motor vehicle graveyard or graveyards, but any such contract may be entered into only with a motor vehicle wrecking facility licensed under the provisions of this part.

(3) Two or more counties may join to form a district for the purpose stated in this section. If a district is formed, all provisions of this part pertaining to a county also apply to a district formed under this subsection.

(4) When there is an accumulation of at least 200 junk vehicles in the graveyard, the county shall notify the department for disposal purposes.

(5) A county shall submit to the department for approval a plan for the collection of junk vehicles and the establishment and operation of the motor vehicle graveyard.

(6) Prior to June 15, the county shall submit to the department for approval a proposed budget for the succeeding fiscal year. The budget shall be for the amounts required by the county for collection costs and acquisition, maintenance, and operation of the graveyard. Any proposed change in the budget or plan must be approved by the department.

History: En. Sec. 5, Ch. 410, L. 1973; amd. Sec. 2, Ch. 251, L. 1977; R.C.M. 1947, 69-6805.

75-10-522. Use of motor vehicle graveyards by individuals. An individual may dispose of a junk vehicle by delivering the vehicle to a motor vehicle graveyard and by delivering to the department the certificate or evidence of title to the vehicle or a written release of the vehicle.

History: En. Sec. 6, Ch. 410, L. 1973; amd. Sec. 1, Ch. 520, L. 1975; amd. Sec. 4, Ch. 252, L. 1977; R.C.M. 1947, 69-6806(4).

75-10-523 through 75-10-530 reserved.

75-10-531. Crushing and recycling of junk vehicles. (1) The department shall contract for final disposition of junk vehicles accumulated in motor vehicle graveyards and shall provide for crushing and recycling the material from the vehicles.

(2) The department may also contract to dispose of, by crushing and recycling, junk vehicles accumulated in the yard of a motor vehicle wrecking facility. The department may so contract only upon the request of the facility and only if there is an accumulation of at least 200 vehicles at the facility.

History: En. Sec. 6, Ch. 410, L. 1973; amd. Sec. 1, Ch. 520, L. 1975; amd. Sec. 4, Ch. 252, L. 1977; R.C.M. 1947, 69-6806(1), (2).

75-10-532. Disposition of moneys collected. All moneys received from the sale of the junk vehicles or from recycling of the material and all motor vehicle wrecking facility license fees and fees collected as motor vehicle disposal fees shall be deposited with the state treasurer to be utilized for the control, collection, recycling, and disposal of junk vehicles and component parts.

History: Ap. p. Sec. 6, Ch. 410, L. 1973; amd. Sec. 1, Ch. 520, L. 1975; amd. Sec. 4, Ch. 252, L. 1977; Sec. 69-6806, R.C.M. 1947; Ap. p. Sec. 7, Ch. 410, L. 1973; amd. Sec. 1, Ch. 52, L. 1975;

amd. Sec. 2, Ch. 520, L. 1975; amd. Sec. 18, Ch. 140, L. 1977; amd. Sec. 5, Ch. 252, L. 1977; Sec. 69-6807, R.C.M. 1947; R.C.M. 1947, 69-6806(3), 69-6807(1).

75-10-533. Department to report fees to legislature. The department shall report to each legislature the amount collected under this part and 61-3-508 and the cost of administration of this part, except 75-10-520, to date so that any necessary adjustment of the amount of the fee may be made to assure that no more than the actual cost of operation of the program is collected.

History: En. Sec. 7, Ch. 410, L. 1973; amd. Sec. 1, Ch. 52, L. 1975; amd. Sec. 2, Ch. 520, L. 1975; amd. Sec. 18, Ch. 140, L. 1977; amd. Sec. 5, Ch. 252, L. 1977; R.C.M. 1945, 69-6807(3).

Compiler's Comments

Relationship of part to new section. The words "except 75-10-520" were added to this section by the code commissioner to make it clear that 75-10-520 is not intended as an integral part of Title 75, chapter 10, part 5. Section 75-10-520 was enacted by Sec. 1, Ch. 244, L. 1979, without a codification instruction. It is codified in Title 75, chapter 10, part 5, for code user convenience. Penalty provisions and provisions relating to powers and duties of the department of health and environmental sciences have no application to 75-10-520.

75-10-534. Department to pay approved county budget. The department shall pay to a county the amount of the approved junk vehicle collection and graveyard budget of the county. The yearly payment may not exceed $1 for each motor vehicle under 8,001 pounds gross vehicle weight that is licensed in that county. However, for those counties that have fewer than 5,000 such motor vehicles, the department may pay up to $5,000, providing the county can justify this payment.

History: En. Sec. 7, Ch. 410, L. 1973; amd. Sec. 1, Ch. 52, L. 1975; amd. Sec. 2, Ch. 520, L. 1975; amd. Sec. 18, Ch. 140, L. 1977; amd. Sec. 5, Ch. 252, L. 1977; R.C.M. 1945, 69-6807(4).

75-10-535 through 75-10-540 reserved.

75-10-541. Injunction — action to collect civil penalty. (1) The department, through the attorney general or the county attorney of the county in which a facility is located, may sue to enjoin the operation or maintenance of a motor vehicle wrecking facility or graveyard either permanently or until compliance with this part, the rules of the department, or an order issued pursuant to this part has been demonstrated.

(2) The department, through the attorney general or the county attorney of the county in which a motor vehicle wrecking facility or graveyard is located, may sue in district court to collect a civil penalty as provided in 75-10-542.

History: En. Sec. 10, Ch. 410, L. 1973; amd. Sec. 7, Ch. 252, L. 1977; R.C.M. 1947, 69-6810.

75-10-542. Penalties. (1) A person who willfully violates this part, except 75-10-520, is guilty of a misdemeanor and upon conviction shall be fined not to exceed $250, imprisoned in the county jail for a term not to exceed 30 days, or both.

(2) A person who violates this part, except 75-10-520, a rule of the department, or an order issued as provided in this part shall be subject to a civil penalty of not more than $50. Each day upon which a violation of this part or a rule or order occurs is a separate violation.

History: En. 69-6812 by Sec. 2, Ch. 112, L. 1975; amd. Sec. 8, Ch. 252, L. 1977; R.C.M. 1947, 69-6812.

Compiler's Comments

Relationship of part to new section. The words "except 75-10-520" were added to this section by the code commissioner to make it clear that 75-10-520 is not intended as an integral part of Title 75, chapter 10, part 5. Section

75-10-520 was enacted by Sec. 1, Ch. 244, L. 1979, without a codification instruction. It is codified in Title 75, chapter 10, part 5, for code user convenience. Penalty provisions and provisions relating to powers and duties of the department of health and environmental sciences have no application to 75-10-520.

CHAPTERS 11 THROUGH 14

RESERVED

CHAPTER 15

LANDSCAPE MANAGEMENT

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Part 1

Outdoor Advertising

75-15-101. Short title. This part may be cited as the "Outdoor Advertising Act".

History: **En. Sec. 1, Ch. 2, 2nd Ex. L. 1971; R.C.M. 1947, 32-4715(b).**

75-15-102. Policy. The legislature finds and declares that in order to promote the safety, convenience, and enjoyment of travel on and protection of the public investment in highways within this state and to preserve and enhance the natural scenic beauty or aesthetic features of the highways and adjacent areas, it shall be the policy of this state that the erection and maintenance of outdoor advertising in areas adjacent to the right-of-way of the interstate and primary systems within this state shall be regulated in accordance with the terms of this part and the rules promulgated by the commission pursuant thereto. It is the intention of the legislature in this part to provide a statutory basis for regulation of outdoor advertising consistent with the public policy relating to areas adjacent to the interstate and primary systems declared by congress in Title 23, United States Code, "Highways".

History: **En. Sec. 1, Ch. 2, 2nd Ex. L. 1971; R.C.M. 1947, 32-4715(a).**

75-15-103. Definitions. As used in this part, the following definitions apply:

(1) "Commercial or industrial activities" means for purposes of subsection (14) those activities generally recognized as commercial or industrial by zoning authorities in this state, except that none of the following activities shall be considered commercial or industrial:

(a) agricultural, forestry, grazing, farming, and related activities, including wayside fresh produce stands;

(b) transient or temporary activities;

(c) activities not visible from the main-traveled way;

(d) activities conducted in a building principally used as a residence;

(e) railroad tracks and minor sidings;

(f) activities more than 660 feet from the nearest edge of the right-of-way.

(2) "Commercial or industrial zone" means an area which is used or reserved for business, commerce, or trade pursuant to comprehensive local zoning ordinances or regulations or enabling state legislation or state legislation itself, including highway service areas lawfully zoned as highway service zones, where the primary use of the land is or is reserved for commercial and roadside services, other than outdoor advertising, to serve the traveling public. Areas temporarily zoned as commercial or industrial by an interim regulation or map adopted as an emergency measure pursuant to 76-2-206 shall not be considered as covered by this definition.

(3) "Commission" means the highway commission of Montana.

(4) "Department" means the department of highways.

(5) "Information center" means an area or site established or maintained at safety rest areas for the purpose of informing the public of places of interest within the state and providing such other information as the commission may consider desirable.

(6) "Interchange" or "intersection" means those areas and their approaches where traffic is channeled off or onto an interstate route, including the deceleration lanes or acceleration lanes from or to another federal, state, county, city, or other route.

(7) "Interstate system" means that portion of the national system of interstate and defense highways located within this state as officially designated or as may hereafter be so designated by the commission and approved by the secretary pursuant to the provisions of Title 23, United States Code, "Highways".

(8) "Maintain" means to allow to exist, subject to the provisions of this part.

(9) "Maintenance" means to repair, refurbish, repaint, or otherwise keep an existing sign structure in a state suitable for use.

(10) "Outdoor advertising" means any outdoor sign, display, light, device, figure, painting, drawing, message, plaque, poster, billboard, or other structure which is designed, intended, or used to advertise or inform and which is visible from any place on the main-traveled way of the interstate or primary systems.

(11) "Primary system" means that portion of connected main highways as officially designated or as may hereafter be so designated by the commission and approved by the secretary pursuant to the provisions of Title 23, United States Code, "Highways".

(12) "Safety rest area" means an area or site established and maintained within or adjacent to the right-of-way, by or under public supervision or control, for the convenience of the traveling public.

(13) "Secretary" means the secretary of the United States department of transportation.

(14) "Unzoned commercial or industrial area" means an area not zoned by state or local law, regulation, or ordinance which is occupied by one or more industrial or commercial activities, other than outdoor advertising, on the lands along the highway for a distance of 600 feet immediately adjacent to the activities and those lands directly opposite on the other side of the highway to the extent of the same dimensions and to a maximum depth of 660 feet when measured from the highway right-of-way; provided those lands on the opposite side of the highway are not deemed scenic or having aesthetic value as determined by the commission.

(15) "Urban area" means an urbanized area or place, as designated by the United States bureau of the census, having a population of 5,000 or more and within boundaries fixed by the department of highways, which boundaries shall as a minimum encompass the entire urban place designated by said bureau of the census.

(16) "Visible" means capable of being seen and legible without visual aid by a person of normal visual acuity.

History: (1) thru (3), (5) thru (16)En. Sec. 2, Ch. 2, 2nd Ex. L. 1971; amd. Sec. 1, Ch. 89, L. 1974; amd. Sec. 1, Ch. 216, L. 1975; (4)En. by Code Commissioner, 1979; R.C.M. 1947, 32-4716.

75-15-104. More restrictive regulations preserved. Nothing in this part shall be construed to abrogate or affect the provisions of any lawful ordinance, regulation, or resolution which is more restrictive than the provisions of this part.

History: En. Sec. 11, Ch. 2, 2nd Ex. L. 1971; R.C.M. 1947, 32-4725.

75-15-105. Relaxation of regulations if federal law changed. In the event the general requirements of Title 23, United States Code, "Highways", or existing rules and regulations of the United States department of transportation become amended or changed to less restrictive conditions than presently exist, then the commission must amend or change such rules that it may have adopted to come into conformity with the federal law, rule, and regulation; however, in no event shall this part become more restrictive than is indicated herein by said federal action.

History: En. Sec. 12, Ch. 2, 2nd Ex. L. 1971; R.C.M. 1947, 32-4726.

75-15-106 through 75-15-110 reserved.

75-15-111. Outdoor advertising prohibited in proximity to highway — exceptions. (1) Outdoor advertising may not be erected or maintained which is within 660 feet of the nearest edge of the right-of-way and which is visible from any place on the main-traveled way of an interstate or primary system except:

(a) directional and other official signs and notices, which signs and notices include but are not limited to signs and notices pertaining to natural wonders and scenic and historical attractions, as authorized or required by law;

(b) signs, displays, and devices advertising the sale or lease of property upon which they are located;

(c) signs, displays, and devices advertising activities conducted on the property upon which they are located;

(d) signs, displays, and devices located in areas which are zoned industrial or commercial by a bona fide state, county, or local zoning authority;

(e) signs, displays, and devices located in unzoned commercial or industrial areas, which areas shall be determined from actual land uses and by agreement between the department of highways and the secretary and defined by rules adopted by the commission. The exception granted by this subsection shall not apply to signs, displays, and devices located within an unzoned area in which the commercial or industrial activity used in defining the area has ceased for a period of 9 months.

(f) signs or displays advertising the cultural exhibits of nonprofit historical or arts organizations if the signs or displays conform with the standards provided in Title 23, Code of Federal Regulations, section 750, subpart B.

(2) Outdoor advertising authorized under subsections (a), (d), and (e) of (1) of this section shall conform with standards contained in and shall bear permits required in rules which are adopted by the commission and this part.

(3) Outdoor advertising may not be erected or maintained beyond 660 feet of the nearest edge of the right-of-way of an interstate or primary highway outside of an urban area if such outdoor advertising is or was erected with the purpose of its message being read from such main-traveled way and visible from such main-traveled way unless such outdoor advertising meets the criteria of subsections (a), (b), or (c) of (1) of this section. Should such outdoor advertising meet said criteria, it shall conform with standards contained in rules which are adopted by the commission and this part.

History: En. Sec. 3, Ch. 2, 2nd Ex. L. 1971; amd. Sec. 160, Ch. 316, L. 1974; amd. Sec. 2, Ch. 216, L. 1975; R.C.M. 1947, 32-4717; amd. Sec. 1, Ch. 497, L. 1981.

Compiler's Comments

1981 Amendment: Inserted subsection (1)(f).

75-15-112. Unlawful advertising. Outdoor advertising is unlawful:

(1) when erected after June 24, 1971, contrary to this part or erected after June 24, 1971, beyond 660 feet of the nearest edge of the right-of-way of an interstate or primary highway outside of an urban area with the purpose of its message being read from such main-traveled way and visible from such main-traveled way, unless such outdoor advertising meets the criteria of subsections (a), (b), or (c) of 75-15-111(1);

(2) when a permit is not obtained as prescribed in this part; or

(3) when a permittee fails to comply with a notice of violation as provided in 75-15-132.

History: En. Sec. 8, Ch. 2, 2nd Ex. L. 1971; amd. Sec. 3, Ch. 89, L. 1974; amd. Sec. 165, Ch. 316, L. 1974; amd. Sec. 5, Ch. 216, L. 1975; amd. Sec. 4, Ch. 234, L. 1977; R.C.M. 1947, 32-4722(1).

75-15-113. Standards for permitted advertising. Except for outdoor advertising beyond 660 feet of the nearest edge of the right-of-way of an interstate or primary highway outside of an urban area, outdoor advertising permitted under subsections (1)(d) and (1)(e) of 75-15-111 shall conform to the following requirements:

(1) Signs may not be erected or maintained which exceed 1,200 square feet in area, including border and trim but excluding base or apron, supports, and other structural members.

(2) Maximum length, 60 feet.

(3) Maximum height, 40 feet as measured from the ground or, if the sign is attached to a structure, as measured from the base of the sign itself.

(4) No more than two facings visible and readable from the same direction on the main-traveled way may be erected on any one sign structure. Whenever two facings are so positioned, neither shall exceed 325 square feet.

(5) Double-faced, back-to-back, and V-type signs shall be considered as a single sign or structure.

(6) Where two or more faces, back to back, are supported by separate structures, each shall be considered a single sign.

(7) No two signs shall be spaced less than 500 feet apart adjacent to an interstate highway or limited-access primary highway, except that signs may be erected closer than 500 feet if they are separated by buildings or other obstructions in such a manner that only one sign facing located within the above spacing distance is visible from the highway at any one time.

(8) Signs may not be located within 500 feet of any of the following which are adjacent to the highway unless the signs are in an incorporated area:

(a) public parks;

(b) public forests;

(c) public playgrounds;

(d) scenic areas designated as such by the highway department or other state agency having and exercising this authority;

(e) cemeteries.

(9) A sign may not be located on an interstate highway or freeway within 500 feet of an interchange or intersection at grade or rest area. The 500 feet is to be measured along the interstate or freeway from the beginning or ending of the pavement widening at the exit from or entrance to the main-traveled way.

(10) Signs may be illuminated, subject to the following restrictions:

(a) Signs which contain, include, or are illuminated by a flashing, intermittent, or moving light or lights are prohibited, except those giving public service information such as time, date, temperature, weather, or similar information.

(b) Signs which are not effectively shielded as to prevent beams or rays of light from being directed at a portion of the traveled ways of the interstate or federal-aid primary highway or which are of such intensity or brilliance as to cause glare or to impair the vision of the driver of any motor vehicle or which otherwise interfere with a driver's operation of a motor vehicle are prohibited.

(c) A sign may not be so illuminated that it interferes with the effectiveness of or obscures an official traffic sign, device, or signal.

(11) The location of sign structures situated on the primary highways between streets, roads, or highways entering or intersecting the main-traveled way shall conform to the following minimum spacing criteria:

(a) Where the distance between centerlines of intersecting streets or highways is less than 1,000 feet, a minimum spacing between structures of 150 feet may be permitted between the intersecting streets or highways.

(b) Where the distance between centerlines of intersecting streets or highways is 1,000 feet or more, minimum spacing between sign structures shall be 300 feet.

History: En. Sec. 5, Ch. 2, 2nd Ex. L. 1971; amd. Sec. 2, Ch. 89, L. 1974; amd. Sec. 162, Ch. 316, L. 1974; amd. Sec. 3, Ch. 216, L. 1975; R.C.M. 1947, 32-4719; amd. Sec. 1, Ch. 45, L. 1979.

75-15-114 through 75-15-120 reserved.

75-15-121. Commission rules authorized. The commission may adopt rules to control the erection and maintenance of outdoor advertising along the interstate and primary highway systems in conformance with the terms of this part and in conformity with section 131 of Title 23, United States Code, as amended.

History: En. Sec. 4, Ch. 2, 2nd Ex. L. 1971; amd. Sec. 161, Ch. 316, L. 1974; R.C.M. 1947, 32-4718.

75-15-122. Permits required — identification tags — preexisting structures. (1) A sign authorized by subsections (a), (d), and (e) of 75-15-111(1) may not be constructed or maintained without a permit. Applications for permits shall be made to the department on forms furnished by it. The department shall require reasonable information to be furnished, including a statement that the owner or occupant of the land has consented to the erection or maintenance of the sign on the land. A permit must be obtained for each sign, and the application for the permit must be accompanied by an initial fee of $6.

(2) Permits shall be issued for 3 years, assigned a permit number, and renewed every 3 years thereafter upon payment of $3 without the filing of a new application. All fees received shall be paid into the highway account in the earmarked revenue fund.

(3) The department shall issue with each new permit a permanent identification tag not larger than 36 square inches which shall be affixed to the sign in a position readily visible from the highway.

(4) Notwithstanding the foregoing provisions of this section, the department shall issue permits and identification tags upon application and payment of the requisite fee for a structure lawfully in existence on June 23, 1971, and the permits shall thereafter be renewed for a period of time as is prescribed in this section unless the structure is removed for improper maintenance.

(5) Notwithstanding the foregoing provisions of this section, the department shall issue permits and identification tags upon application and payment of the requisite fee for outdoor advertising lawfully in existence on June 23, 1971, and made nonconforming by virtue of 75-15-111(3), and the permits shall thereafter be renewed for a period of time as is prescribed in this section unless the structure is removed for improper maintenance.

History: En. Sec. 6, Ch. 2, 2nd Ex. L. 1971; amd. Sec. 163, Ch. 316, L. 1974; amd. Sec. 1, Ch. 22, L. 1975; amd. Sec. 4, Ch. 216, L. 1975; R.C.M. 1947, 32-4720.

75-15-123. Acquisition of outdoor advertising rights — compensation. (1) The department may acquire by gift, purchase, agreement, exchange, or eminent domain existing outdoor advertising and property rights pertaining to advertising that was lawfully in existence on June 24, 1971, and which by virtue of 75-15-111(1) is nonconforming. Eminent domain shall be exercised in accordance with the laws of the state.

(2) Just compensation shall be paid for outdoor advertising and property rights pertaining to the advertising acquired through the process of eminent domain. The department may remove outdoor advertising found in violation of 75-15-112 or 75-15-132 without payment of compensation.

(3) Except as provided in 75-15-131 and 75-15-132, a sign may not be required to be removed unless at the time of removal or discontinuance there are sufficient funds, from whatever source, appropriated and immediately available to pay the just compensation required under this section and unless at that time the federal funds required to be contributed under section 131(g) of Title 23, United States Code, with respect to the outdoor advertising being removed have been apportioned and are immediately available to this state.

History: En. Sec. 9, Ch. 2, 2nd Ex. L. 1971; amd. Sec. 166, Ch. 316, L. 1974; amd. Sec. 6, Ch. 216, L. 1975; R.C.M. 1947, 32-4723(part); amd. Sec. 14, Ch. 68, L. 1979.

75-15-124. Agreements with secretary establishing specifications for advertising. The department may enter into an agreement with the secretary regarding the size, lighting, and spacing of outdoor advertising, as provided in this part, which may be erected and maintained within the areas adjacent to the interstate and primary highway system which are zoned commercial, industrial, or in such other unzoned commercial or industrial areas as may be determined by agreement and as provided in this part.

History: En. Sec. 10, Ch. 2, 2nd Ex. L. 1971; amd. Sec. 167, Ch. 316, L. 1974; R.C.M. 1947, 32-4724.

75-15-125 through 75-15-130 reserved.

75-15-131. Entry to inspect — notice of unlawful advertising — remedial action. (1) The department may enter upon lands bearing outdoor advertising and make examination of such advertising.

(2) The department shall give notice in writing, either by certified mail or by personal service, to the owner or occupant of the land on which advertising believed to be unlawful is located and to the owner of the outdoor advertising structure if the latter is known or, if unknown, by posting notice in a conspicuous place on the structure of its intention to remove the unlawful advertising. Within 45 days after the notice, the owner of the land or of the structure may make a written request for a hearing before the commission to show cause why the structure should not be removed.

(3) If a hearing before the commission is not requested or if there is no appeal taken from the commission's decision at the hearing or if the commission's decision is affirmed on appeal, the department shall immediately remove or cause to be removed the unlawful outdoor advertising. The department may, upon final determination by the commission that an item of outdoor advertising is unlawful, enter upon lands bearing such advertising and remove the unlawful advertising.

(4) The owner of the structure and the owner or occupant of the land are jointly and severally liable for the costs of the removal.

History: En. Sec. 8, Ch. 2, 2nd Ex. L. 1971; amd. Sec. 3, Ch. 89, L. 1974; amd. Sec. 165, Ch. 316, L. 1974; amd. Sec. 5, Ch. 216, L. 1975; amd. Sec. 4, Ch. 234, L. 1977; R.C.M. 1947, 32-4722(2), (3).

75-15-132. False application or disrepair of structure — remedial action. When the department determines that a willful false or misleading statement has been made in the application for a permit or that the structure for which a permit was issued is not in a reasonable state of repair or is unsafe, the department shall notify the holder of the permit in writing, either by certified mail or by personal service, of the violation and specify that remedial action shall be taken within 60 days or the permit will be revoked and action for removal of the sign commenced as provided in 75-15-131. No notice is required prior to filing a complaint after the notice period has lapsed.

History: En. Sec. 7, Ch. 2, 2nd Ex. L. 1971; amd. Sec. 164, Ch. 316, L. 1974; R.C.M. 1947, 32-4721.

75-15-133. Nonconforming advertising as nuisance. All outdoor advertising which does not conform to the requirements of this part is a public nuisance.

History: En. Sec. 16, Ch. 2, 2nd Ex. L. 1971; amd. Sec. 3, Ch. 140, L. 1977; R.C.M. 1947, 32-4728.

75-15-134. Violation as misdemeanor. Any person violating any provision of this part is guilty of a misdemeanor.

History: En. Sec. 15, Ch. 2, 2nd Ex. L. 1971; R.C.M. 1947, 32-4727.

Part 2

Junkyards

75-15-201. Purposes. (1) For the purposes of promoting the public safety, health, and welfare and the convenience and enjoyment of public travel, to protect the public investment in public highways, and to preserve and enhance the scenic beauty of lands bordering public highways, it is hereby declared to be in the public interest to regulate and restrict the establishment, operation, and maintenance of junkyards in areas adjacent to the interstate and primary systems within this state.

(2) The legislature hereby finds and declares that junkyards which do not conform to the requirements of this part are public nuisances.

History: **En. Sec. 1, Ch. 285, L. 1967; R.C.M. 1947, 32-4513.**

75-15-202. Interpretation. Nothing in this part shall be construed to abrogate or affect the provisions of any lawful ordinance, regulation, or resolution which is more restrictive than the provisions of this part.

History: **En. Sec. 11, Ch. 285, L. 1967; R.C.M. 1947, 32-4523.**

75-15-203. Definitions. As used in this part only, the following definitions apply:

(1) "Automobile graveyard" means any establishment or place of business which is maintained, used, or operated for storing, keeping, buying, or selling wrecked, scrapped, ruined, or dismantled motor vehicles or motor vehicle parts.

(2) "Interstate system" means that portion of the national system of interstate and defense highways located within this state as officially designated or as may hereafter be so designated by the state highway commission and approved by the secretary of transportation pursuant to the provisions of Title 23, United States Code, "Highways".

(3) "Junk" means old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber debris, or waste; junked, dismantled, or wrecked automobiles (or parts thereof); iron, steel, and other old or scrap ferrous or nonferrous material.

(4) "Junkyard" means any establishment or place of business which is maintained, operated, or used for storing, keeping, buying, or selling junk or for the maintenance or operation of an automobile graveyard or a garbage dump or sanitary fill.

(5) "Primary system" means that portion of connected main highways as officially designated or as may hereafter be so designated by the commission and approved by the secretary of transportation pursuant to the provisions of Title 23, United States Code, "Highways".

History: **En. Sec. 2, Ch. 285, L. 1967; R.C.M. 1947, 32-4514.**

75-15-204. Agreements with the United States. The department of highways may enter into agreements with the United States secretary of transportation as provided in Title 23, United States Code, relating to the control of junkyards in areas adjacent to the interstate and primary systems and take action in the name of the state to comply with the terms of those agreements.

History: **En. Sec. 10, Ch. 285, L. 1967; amd. Sec. 159, Ch. 316, L. 1974; R.C.M. 1947, 32-4522.**

75-15-205. Injunction. The department of highways may apply to the district court for the county in which is located any junkyard not conforming to the requirements of this part for an injunction to abate such nuisance.

History: **En. Sec. 9, Ch. 285, L. 1967; amd. Sec. 158, Ch. 316, L. 1974; R.C.M. 1947, 32-4521.**

75-15-206 through 75-15-210 reserved.

75-15-211. License required. No person shall establish, operate, or maintain a junkyard, any portion of which is within 1,000 feet of the nearest edge of the right-of-way of any interstate or primary highway, without obtaining a license.

History: En. Sec. 3, Ch. 285, L. 1967; amd. Sec. 12, Ch. 410, L. 1973; R.C.M. 1947, 32-4515.

75-15-212. Issuance of license — appeals. (1) The department of health and environmental sciences may issue licenses for the establishment, maintenance, and operation of motor vehicle wrecking facilities and graveyards as provided in chapter 10, part 5, of this title.

(2) The issuance, denial, or revocation of a license under the provisions of chapter 10, part 5, may, on the basis of 75-15-223, be appealed to the board of health and environmental sciences.

History: En. Sec. 4, Ch. 285, L. 1967; amd. Sec. 13, Ch. 410, L. 1973; amd. Sec. 9, Ch. 252, L. 1977; R.C.M. 1947, 32-4516(1).

75-15-213. Highways as party — mandatory purchases. The department of highways may object to and participate as a party in all decisions concerning the issuance, denial, or revocation of a license under the provisions of chapter 10, part 5, if the facility in question is within 1,000 feet of the nearest edge of the right-of-way of any interstate or primary highway. If the department of highways objects to the licensing of a facility pursuant to this section, it shall proceed under the provisions of 75-15-223(2).

History: En. Sec. 4, Ch. 285, L. 1967; amd. Sec. 13, Ch. 410, L. 1973; amd. Sec. 9, Ch. 252, L. 1977; R.C.M. 1947, 32-4516(2).

75-15-214. Highways to issue license for certain junkyards. (1) The department of highways may issue a license for a junkyard that is not a motor vehicle wrecking facility as defined in chapter 10, part 5, of this title.

(2) Nothing in 75-15-212 through 75-15-214 prohibits the department of highways from acquiring an interest in land for screening purposes or paying for screening installation and materials as authorized by this part.

History: En. Sec. 4, Ch. 285, L. 1967; amd. Sec. 13, Ch. 410, L. 1973; amd. Sec. 9, Ch. 252, L. 1977; R.C.M. 1947, 32-4516(3), (4).

75-15-215. Restrictions as to location. No license may be granted for the establishment, maintenance, or operation of a junkyard within 1,000 feet of the nearest edge of the right-of-way of a highway on the interstate or primary systems except a license may be granted for a junkyard:

(1) screened by natural objects, planted objects, fences, or other appropriate means so as not to be visible from the main-traveled way of any such highway or otherwise removed from sight;

(2) located within an area zoned for industrial use under authority of law;

(3) located within an unzoned industrial area, as determined from actual land uses and defined by rules promulgated by the department of highways;

(4) that is not visible from the main-traveled way of any such highway.

History: En. Sec. 5, Ch. 285, L. 1967; R.C.M. 1947, 32-4517; amd. Sec. 15, Ch. 68, L. 1979.

75-15-216 through 75-15-220 reserved.

75-15-221. Repealed. Sec. 2, Ch. 61, L. 1979.

History: En. Sec. 6, Ch. 285, L. 1967; amd. Sec. 155, Ch. 316, L. 1974; R.C.M. 1947, 32-4518.

75-15-222. Rules governing screening. (1) The department of health and environmental sciences shall adopt rules governing the screening or shielding of motor vehicle wrecking facilities as provided in chapter 10, part 5, of this title.

(2) The department of highways may adopt rules governing the materials to be used in and the location, planting, construction, and maintenance of screening or fencing required by this part.

(3) The department of highways may determine that in the best interests of the state, additional screening is required of certain junkyards or motor vehicle wrecking facilities licensed under this title. The cost of any additional screening shall be borne or reimbursed by the department of highways.

History: En. Sec. 7, Ch. 285, L. 1967; amd. Sec. 156, Ch. 316, L. 1974; amd. Sec. 10, Ch. 252, L. 1977; R.C.M. 1947, 32-4519; amd. Sec. 1, Ch. 61, L. 1979.

75-15-223. Authority to acquire interest in land for screening and removal of junkyards. (1) When the department of highways determines that it is in the best interests of the state, it may acquire such lands or interests in lands as may be necessary to provide adequate screening.

(2) When the department of highways determines that the topography of the land adjoining the highway will not permit adequate or economically feasible screening, it may acquire by gift, purchase, exchange, or condemnation such interests in lands as may be necessary to secure the relocation, removal, or disposal of junkyards which were either lawfully:

(a) in existence on October 22, 1965;

(b) along any highway made a part of the interstate or primary systems on or after October 22, 1965, and before January 1, 1968; or

(c) established on or after January 1, 1968.

(3) The department of highways shall pay just compensation to the owner for the relocation, removal, or disposal of any such junkyard.

History: En. Sec. 8, Ch. 285, L. 1967; amd. Sec. 157, Ch. 316, L. 1974; R.C.M. 1947, 32-4520.

CHAPTERS 16 THROUGH 19

RESERVED

CHAPTER 20

MAJOR FACILITY SITING

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Part 1

Policy and General Provisions

75-20-101. Short title. This chapter shall be known and may be cited as the "Montana Major Facility Siting Act".

History: **En. Sec. 1, Ch. 327, L. 1973; amd. Sec. 1, Ch. 494, L. 1975; R.C.M. 1947, 70-801.**

75-20-102. Policy and legislative findings. (1) It is the constitutionally declared policy of this state to maintain and improve a clean and healthful environment for present and future generations, to protect the environmental life-support system from degradation and prevent unreasonable depletion and degradation of natural resources, and to provide for administration and enforcement to attain these objectives.

(2) The legislature finds that the construction of additional power or energy conversion facilities may be necessary to meet the increasing need for electricity, energy, and other products and that these facilities have an effect on the environment, an impact on population concentration, and an effect on the welfare of the citizens of this state. Therefore, it is necessary to ensure that the location, construction, and operation of power and energy conversion facilities will produce minimal adverse effects on the environment and upon the citizens of this state by providing that a power or energy conversion facility may not be constructed or operated within this state without a certificate of environmental compatibility and public need acquired pursuant to this chapter.

History: **En. Sec. 2, Ch. 327, L. 1973; amd. Sec. 2, Ch. 494, L. 1975; R.C.M. 1947, 70-802.**

75-20-103. Chapter supersedes other laws or rules. This chapter supersedes other laws or regulations except as provided in 75-20-401. If any provision of this chapter is in conflict with any other law of this state or any rule promulgated thereunder, this chapter shall govern and control and the other law or rule shall be deemed superseded for the purpose of this chapter. Amendments to this chapter shall have the same effect.

History: **En. Sec. 23, Ch. 327, L. 1973; amd. Sec. 23, Ch. 494, L. 1975; R.C.M. 1947, 70-823; amd. Sec. 1, Ch. 676, L. 1979.**

75-20-104. Definitions. In this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Addition thereto" means the installation of new machinery and equipment which would significantly change the conditions under which the facility is operated.

(2) "Application" means an application for a certificate submitted in accordance with this chapter and the rules adopted hereunder.

(3) "Associated facilities" includes but is not limited to transportation links of any kind, aqueducts, diversion dams, transmission substations, storage ponds, reservoirs, and any other device or equipment associated with the production or delivery of the energy form or product produced by a facility, except that the term does not include a facility.

(4) "Board" means the board of natural resources and conservation provided for in 2-15-3302.

(5) "Board of health" means the board of health and environmental sciences provided for in 2-15-2104.

(6) "Certificate" means the certificate of environmental compatibility and public need issued by the board under this chapter that is required for the construction or operation of a facility.

(7) "Commence to construct" means:

(a) any clearing of land, excavation, construction, or other action that would affect the environment of the site or route of a facility but does not mean changes needed for temporary use of sites or routes for nonutility purposes or uses in securing geological data, including necessary borings to ascertain foundation conditions;

(b) the fracturing of underground formations by any means if such activity is related to the possible future development of a gasification facility or a facility employing geothermal resources but does not include the gathering of geological data by boring of test holes or other underground exploration, investigation, or experimentation;

(c) the commencement of eminent domain proceedings under Title 70, chapter 30, for land or rights-of-way upon or over which a facility may be constructed;

(d) the relocation or upgrading of an existing facility defined by (b) or (c) of subsection (10), including upgrading to a design capacity covered by subsection (10)(b), except that the term does not include normal maintenance or repair of an existing facility.

(8) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(9) "Department of health" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(10) "Facility" means:

(a) except for crude oil and natural gas refineries, and facilities and associated facilities designed for or capable of producing, gathering, processing, transmitting, transporting, or distributing crude oil or natural gas, and those facilities subject to The Montana Strip and Underground Mine Reclamation Act, each plant, unit, or other facility and associated facilities designed for or capable of:

(i) generating 50 megawatts of electricity or more or any addition thereto (except pollution control facilities approved by the department of health and environmental sciences added to an existing plant) having an estimated cost in excess of $10 million;

(ii) producing 25 million cubic feet or more of gas derived from coal per day or any addition thereto having an estimated cost in excess of $10 million;

(iii) producing 25,000 barrels of liquid hydrocarbon products per day or more or any addition thereto having an estimated cost in excess of $10 million;

(iv) enriching uranium minerals or any addition thereto having an estimated cost in excess of $10 million; or

(v) utilizing or converting 500,000 tons of coal per year or more or any addition thereto having an estimated cost in excess of $10 million;

(b) each electric transmission line and associated facilities of a design capacity of more than 69 kilovolts, except that the term does not include an electric transmission line and associated facilities of a design capacity of 230 kilovolts or less and 10 miles or less in length;

(c) each pipeline and associated facilities designed for or capable of transporting gas (except for natural gas), water, or liquid hydrocarbon products from or to a facility located within or without this state of the size indicated in subsection (10)(a) of this section;

(d) any use of geothermal resources, including the use of underground space in existence or to be created, for the creation, use, or conversion of energy, designed for or capable of producing geothermally derived power equivalent to 25 million Btu per hour or more or any addition thereto having an estimated cost in excess of $750,000;

(e) any underground in situ gasification of coal.

(11) "Person" means any individual, group, firm, partnership, corporation, cooperative, association, government subdivision, government agency, local government, or other organization or entity.

(12) "Transmission substation" means any structure, device, or equipment assemblage, commonly located and designed for voltage regulation, circuit protection, or switching necessary for the construction or operation of a proposed transmission line.

(13) "Utility" means any person engaged in any aspect of the production, storage, sale, delivery, or furnishing of heat, electricity, gas, hydrocarbon products, or energy in any form for ultimate public use.

History: En. Sec. 3, Ch. 327, L. 1973; amd. Sec. 1, Ch. 231, L. 1974; amd. Sec. 1, Ch. 268, L. 1974; amd. Sec. 3, Ch. 494, L. 1975; R.C.M. 1947, 70-803; amd. Sec. 1, Ch. 133, L. 1979; amd. Sec. 1, Ch. 527, L. 1979; amd. Sec. 2, Ch. 676, L. 1979; amd. Sec. 1, Ch. 539, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "would significantly change the conditions under which the facility is operated" for "would significantly change the conditions under which the certificate was issued" at the end of (1); added facilities subject to The Montana Strip and Underground Mine Reclamation Act within the exception to the definition of facility in (10)(a); increased $250,000 to $10 million throughout (10)(a); deleted "refining" after "utilizing" in (10)(a)(v); and increased $250,000 to $750,000 at the end of (10)(d).

1981 Effective Date: Section 9, Ch. 539, L. 1981, provided: "This act is effective on passage and approval." Approved April 29, 1981.

1979 Effective Date: Section 2, Ch. 527, L. 1979, provided: "This act is effective on passage and approval." Approved April 10, 1979.

75-20-105. Adoption of rules. The board may adopt rules implementing the provisions of this chapter, including but not limited to:

(1) rules governing the form and content of applications;

(2) rules further defining the terms used in this chapter;

(3) rules governing the form and content of long-range plans;

(4) any other rules the board considers necessary to accomplish the purposes and objectives of this chapter.

History: En. Sec. 20, Ch. 327, L. 1973; amd. Sec. 4, Ch. 268, L. 1974; amd. Sec. 20, Ch. 494, L. 1975; R.C.M. 1947, 70-820(1).

75-20-106. Contracts for information. (1) The department may contract with a potential applicant under this chapter in advance of the filing of a formal application for the development of information or provision of services required hereunder.

(2) Payments made to the department under such a contract shall be credited against the fee payable hereunder.

History: En. Sec. 6, Ch. 327, L. 1973; amd. Sec. 1, Ch. 115, L. 1974; amd. Sec. 2, Ch. 268, L. 1974; amd. Sec. 1, Ch. 270, L. 1975; amd. Sec. 6, Ch. 494, L. 1975; amd. Sec. 1, Ch. 179, L. 1977; R.C.M. 1947, 70-806(2)(c).

75-20-107 through 75-20-110 reserved.

75-20-111. Grants, gifts, and funds. The department may receive grants, gifts, and other funds from any public or private source to assist in its activities under this chapter.

History: En. Sec. 22, Ch. 327, L. 1973; amd. Sec. 22, Ch. 494, L. 1975; R.C.M. 1947, 70-822.

75-20-112. Moneys to earmarked revenue fund. All fees, taxes, fines, and penalties collected under this chapter shall be deposited in the earmarked revenue fund for use by the department in carrying out its functions and responsibilities under this chapter.

History: En. 70-824 by Sec. 3, Ch. 270, L. 1975; R.C.M. 1947, 70-824.

Part 2

Certification Proceedings

75-20-201. Certificate required — operation in conformance — approval by popular vote of certificate for nuclear facility. (1) A person may not commence to construct a facility in the state without first applying for and obtaining a certificate of environmental compatibility and public need issued with respect to the facility by the board.

(2) A facility with respect to which a certificate is issued may not thereafter be constructed, operated, or maintained except in conformity with the certificate and any terms, conditions, and modifications contained therein.

(3) A certificate may only be issued pursuant to this chapter.

(4) If the board decides to issue a certificate for a nuclear facility, it shall report such recommendation to the applicant and may not issue the certificate until such recommendation is approved by a majority of the voters in a statewide election called by initiative or referendum according to the laws of this state.

History: En. Sec. 4, Ch. 327, L. 1973; amd. Sec. 4, Ch. 494, L. 1975; R.C.M. 1947, 70-804(1); amd. Sec. 3, I.M. 80, app. Nov. 7, 1978.

75-20-202. Exemptions. (1) This chapter does not apply to any aspect of a facility over which an agency of the federal government has exclusive jurisdiction, but applies to any unpreempted aspect of a facility over which an agency of the federal government has partial jurisdiction.

(2) A certificate is not required under this chapter for a facility under diligent onsite physical construction or in operation on January 1, 1973.

(3) The board may adopt reasonable rules establishing exemptions from this chapter for the relocation, reconstruction, or upgrading of a facility that:

(a) would otherwise be covered by this chapter; and

(b) (i) is unlikely to have a significant environmental impact by reason of length, size, location, available space or right-of-way, or construction methods; or

(ii) utilizes coal, wood, biomass, grain, wind, or sun as a fuel source and the technology of which will result in greater efficiency, promote energy conservation, and promote greater system reliability than the existing facility.

History: En. Sec. 4, Ch. 327, L. 1973; amd. Sec. 4, Ch. 494, L. 1975; R.C.M. 1947, 70-804(3) thru (5); amd. Sec. 3, I.M. 80, app. Nov. 7, 1978; amd. Sec. 2, Ch. 539, L. 1981.

Compiler's Comments

1981 Amendment: Added subsection (3)(b)(ii).

Effective Date: Section 9, Ch. 539, L. 1981, provided: "This act is effective on passage and approval." Approved April 29, 1981.

75-20-203. Certificate transferable. A certificate may be transferred, subject to the approval of the board, to a person who agrees to comply with the terms, conditions, and modifications contained therein.

History: En. Sec. 4, Ch. 327, L. 1973; amd. Sec. 4, Ch. 494, L. 1975; R.C.M. 1947, 70-804(2); amd. Sec. 3, I.M. 80, app. Nov. 7, 1978; amd. Sec. 3, Ch. 676, L. 1979.

75-20-204 through 75-20-210 reserved.

75-20-211. Application — filing and contents — proof of service and notice. (1) (a) An applicant shall file with the department and department of health a joint application for a certificate under this chapter and for the permits required under the laws administered by the department of health and the board of health in such form as the board requires under applicable rules, containing the following information:

(i) a description of the location and of the facility to be built thereon;

(ii) a summary of any studies which have been made of the environmental impact of the facility;

(iii) a statement explaining the need for the facility;

(iv) a description of reasonable alternate locations for the proposed facility, a general description of the comparative merits and detriments of each location submitted, and a statement of the reasons why the primary proposed location is best suited for the facility;

(v) baseline data for the primary and reasonable alternate locations;

(vi) at the applicant's option, an environmental study plan to satisfy the requirements of this chapter; and

(vii) such other information as the applicant considers relevant or as the board and board of health by order or rule or the department and department of health by order or rule may require.

(b) A copy or copies of the studies referred to in subsection (1)(a)(ii) above shall be filed with the department, if ordered, and shall be available for public inspection.

(2) An application may consist of an application for two or more facilities in combination which are physically and directly attached to each other and are operationally a single operating entity.

(3) An application shall be accompanied by proof of service of a copy of the application on the chief executive officer of each unit of local government, county commissioner, city or county planning boards, and federal agencies charged with the duty of protecting the environment or of planning land use in the area in which any portion of the proposed facility may be located,

both as primarily and as alternatively proposed and on the following state government agencies:

(a) environmental quality council;

(b) department of public service regulation;

(c) department of fish, wildlife, and parks;

(d) department of state lands;

(e) department of commerce;

(f) department of highways;

(g) department of revenue.

(4) The copy of the application shall be accompanied by a notice specifying the date on or about which the application is to be filed.

(5) An application shall also be accompanied by proof that public notice thereof was given to persons residing in the area or alternative areas in which any portion of the proposed facility may be located, by publication of a summary of the application in those newspapers that will substantially inform those persons of the application.

History: En. Sec. 6, Ch. 327, L. 1973; amd. Sec. 1, Ch. 115, L. 1974; amd. Sec. 2, Ch. 268, L. 1974; amd. Sec. 1, Ch. 270, L. 1975; amd. Sec. 6, Ch. 494, L. 1975; amd. Sec. 1, Ch. 179, L. 1977; R.C.M. 1947, 70-806(part); amd. Sec. 1, Ch. 553, L. 1979; amd. Sec. 4, Ch. 676, L. 1979; amd. Sec. 6, Ch. 274, L. 1981; amd. Sec. 3, Ch. 539, L. 1981.

Compiler's Comments

1981 Amendments: Chapter 274 substituted "department of commerce" for "department of community affairs" in (3)(e).

Chapter 539 substituted "for the permits required under the laws administered by the department of health and the board of health" for "for the permits required by state air and water quality laws" in (1)(a); and substituted "as the board and board of health by order or rule or the department and department of health by order or rule may require" for "as the board and board of health by rule or the department and department of health by order require" at the end of (1)(a)(vii).

Effective Date: Section 9, Ch. 539, L. 1981, provided: "This act is effective on passage and approval." Approved April 29, 1981.

Transfer of Function: Section 6, Ch. 274, L. 1981, provided in part: "(1) The department of community affairs is abolished.

(2) The following functions of the department of community affairs are transferred to the department of commerce: . . .

(e) relating to recommendations concerning major facility siting and contained in 75-20-211, 75-20-216, and 75-20-501; . . ."

Waiver of Baseline Data Requirement if Existing Contract: Section 26, Ch. 676, L. 1979, provided: "The department may in its discretion waive the requirement that baseline data for the primary and reasonable alternate locations be submitted with an application under 75-20-211(1)(a)(v) in those cases in which the applicant has, prior to July 1, 1979, entered into a contract with the department to compile baseline information."

Composite Section: This section was amended by Ch. 553 and Ch. 676, L. 1979, and a composite section was prepared by the Code Commissioner, 1979. Subsection (3) regarding persons and agencies to be served with a copy of an application was amended by both of the above chapters. Ch. 676 deleted "chief executive officer of each" but the Code Commissioner reinserted this phrase to incorporate the change by Ch. 553 from "municipality" to "unit of local government".

75-20-212. Cure for failure of service. Inadvertent failure of service on or notice to any of the municipalities, government agencies, or persons identified in 75-20-211(3) and (5) may be cured pursuant to orders of the department designed to afford them adequate notice to enable their effective participation in the proceeding.

History: En. Sec. 6, Ch. 327, L. 1973; amd. Sec. 1, Ch. 115, L. 1974; amd. Sec. 2, Ch. 268, L. 1974; amd. Sec. 1, Ch. 270, L. 1975; amd. Sec. 6, Ch. 494, L. 1975; amd. Sec. 1, Ch. 179, L. 1977; R.C.M. 1947, 70-806(part).

75-20-213. Supplemental material — amendments. (1) An application for an amendment of an application or a certificate shall be in such form and contain such information as the board by rule or the department by order prescribes. Notice of such an application shall be given as set forth in (3), (4), and (5) of 75-20-211.

(2) An application may be amended by an applicant any time prior to the department's recommendation. If the proposed amendment is such that it prevents the department, the department of health, or the agencies listed in 75-20-216(5) from carrying out their duties and responsibilities under this chapter, the department may require such additional filing fees as the department determines necessary, or the department may require a new application and filing fee.

(3) The applicant shall submit supplemental material in a timely manner as requested by the department or as offered by the applicant to explain, support, or provide the detail with respect to an item described in the original application, without filing an application for an amendment. The department's determination as to whether information is supplemental or whether an application for amendment is required shall be conclusive.

History: **En. Sec. 6, Ch. 327, L. 1973; amd. Sec. 1, Ch. 115, L. 1974; amd. Sec. 2, Ch. 268, L. 1974; amd. Sec. 1, Ch. 270, L. 1975; amd. Sec. 6, Ch. 494, L. 1975; amd. Sec. 1, Ch. 179, L. 1977; R.C.M. 1947, 70-806(6); amd. Sec. 5, Ch. 676, L. 1979.**

75-20-214. Notice of intent to file. A potential applicant for a certificate may file a notice of intent to file an application for a certificate for a facility defined in 75-20-104(10) at least 12 months prior to the actual filing of an application. The notice of intent shall specify the type and size of facility to be applied for, its preferred location, a description of reasonable alternative locations, and such information as the board by rule or department by order requires. An applicant complying with this section is entitled to a 5% reduction of the filing fee required under 75-20-215.

History: **En. Sec. 6, Ch. 327, L. 1973; amd. Sec. 1, Ch. 115, L. 1974; amd. Sec. 2, Ch. 268, L. 1974; amd. Sec. 1, Ch. 270, L. 1975; amd. Sec. 6, Ch. 494, L. 1975; amd. Sec. 1, Ch. 179, L. 1977; R.C.M. 1947, 70-806(7); amd. Sec. 6, Ch. 676, L. 1979.**

75-20-215. Filing fee — accountability — refund — use. (1) (a) A filing fee shall be deposited in the earmarked revenue fund for the use of the department in administering this chapter. The applicant shall pay to the department a filing fee as provided in this section based upon the department's estimated costs of processing the application under this chapter, but which shall not exceed the following scale based upon the estimated cost of the facility:

(i) 2% of any estimated cost up to $1 million; plus

(ii) 1% of any estimated cost over $1 million and up to $20 million; plus

(iii) 0.5% of any estimated cost over $20 million and up to $100 million; plus

(iv) 0.25% of any amount of estimated cost over $100 million and up to $300 million; plus

(v) .125% of any amount of estimated cost over $300 million.

(b) The department may allow in its discretion a credit against the fee payable under this section for the development of information or providing of services required hereunder or required for preparation of an environmental impact statement under the Montana or national environmental policy acts. The applicant may submit the information to the department together with an accounting of the expenses incurred in preparing the information. The department shall evaluate the applicability, validity, and usefulness of the data and determine the amount which may be credited against the filing fee payable under this section. Upon 30 days' notice to the applicant, this credit may at any time be reduced if the department determines that it is necessary to carry out its responsibilities under this chapter.

(2) (a) The department may contract with an applicant for the development of information, provision of services and payment of fees required under this chapter. The contract may continue an agreement entered into pursuant to 75-20-106. Payments made to the department under such a contract shall be credited against the fee payable hereunder. Notwithstanding the provisions of this section, the revenue derived from the filing fee must be sufficient to enable the department, the department of health, the board, the board of health, and the agencies listed in 75-20-216(5) to carry out their responsibilities under this chapter. The department may amend a contract to require additional payments for necessary expenses up to the limits set forth in subsection (1)(a) above upon 30 days' notice to the applicant. The department and applicant may enter into a contract which exceeds the scale provided in subsection (1)(a).

(b) If a contract is not entered into, the applicant shall pay the filing fee in installments in accordance with a schedule of installments developed by the department, provided that no one installment may exceed 20% of the total filing fee provided for in subsection (1).

(3) The estimated cost of upgrading an existing transmission substation may not be included in the estimated cost of a proposed facility for the purpose of calculating a filing fee.

(4) If an application consists of a combination of two or more facilities, the filing fee shall be based on the total estimated cost of the combined facilities.

(5) The applicant is entitled to an accounting of moneys expended and to a refund with interest at the rate of 6% a year of that portion of the filing fee not expended by the department in carrying out its responsibilities under this chapter. A refund shall be made after all administrative and judicial remedies have been exhausted by all parties to the certification proceedings.

(6) The revenues derived from filing fees shall be used by the department in compiling the information required for rendering a decision on a certificate and for carrying out its and the board's other responsibilities under this chapter.

History: En. Sec. 6, Ch. 327, L. 1973; amd. Sec. 1, Ch. 115, L. 1974; amd. Sec. 2, Ch. 268, L. 1974; amd. Sec. 1, Ch. 270, L. 1975; amd. Sec. 6, Ch. 494, L. 1975; amd. Sec. 1, Ch. 179, L. 1977; R.C.M. 1947, 70-806(2)(a), (2)(b); amd. Sec. 7, Ch. 676, L. 1979.

75-20-216. Study, evaluation, and report on proposed facility — assistance by other agencies. (1) After receipt of an application, the department and department of health shall within 90 days notify the applicant in writing that:

(a) the application is in compliance and is accepted as complete; or

(b) the application is not in compliance and list the deficiencies therein; and upon correction of these deficiencies and resubmission by the applicant, the department and department of health shall within 30 days notify the applicant in writing that the application is in compliance and is accepted as complete.

(2) Upon receipt of an application complying with 75-20-211 through 75-20-215, and this section, the department shall commence an intensive study and evaluation of the proposed facility and its effects, considering all applicable criteria listed in 75-20-301 and 75-20-503 and the department of health shall commence a study to enable it or the board of health to issue a decision, opinion, order, certification, or permit as provided in subsection (3). The department and department of health shall use, to the extent they consider applicable, valid and useful existing studies and reports submitted by the applicant or compiled by a state or federal agency.

(3) The department of health shall within 1 year following the date of acceptance of an application and the board of health or department of health, if applicable, within an additional 6 months issue any decision, opinion, order, certification, or permit required under the laws administered by the department of health or the board of health and this chapter. The department of health and the board of health shall determine compliance with all standards, permit requirements, and implementation plans under their jurisdiction for the primary and reasonable alternate locations in their decision, opinion, order, certification, or permit. The decision, opinion, order, certification, or permit, with or without conditions, is conclusive on all matters that the department of health and board of health administer, and any of the criteria specified in subsections (2) through (7) of 75-20-503 that are a part of the determinations made under the laws administered by the department of health and the board of health. Although the decision, opinion, order, certification, or permit issued under this subsection is conclusive, the board retains authority to make the determination required under 75-20-301(2)(c). The decision, opinion, order, certification, or permit of the department of health or the board of health satisfies the review requirements by those agencies and shall be acceptable in lieu of an environmental impact statement under the Montana Environmental Policy Act. A copy of the decision, opinion, order, certification, or permit shall be served upon the department and the board and shall be utilized as part of their final site selection process. Prior to the issuance of a preliminary decision by the department of health and pursuant to rules adopted by the board of health, the department of health shall provide an opportunity for public review and comment.

(4) Within 22 months following acceptance of an application for a facility as defined in (a) and (d) of 75-20-104(10) and for a facility as defined in (b) and (c) of 75-20-104(10) which is more than 30 miles in length and within 1 year for a facility as defined in (b) and (c) of 75-20-104(10) which is 30 miles or less in length, the department shall make a report to the board which shall contain the department's studies, evaluations, recommendations, other pertinent documents resulting from its study and evaluation, and an environmental impact statement or analysis prepared pursuant to the Montana Environmental Policy Act, if any. If the application is for a combination of two or more facilities, the department shall make its report to the board within the greater of the lengths of time provided for in this subsection for either of the facilities.

(5) The departments of highways; commerce; fish, wildlife, and parks; state lands; revenue; and public service regulation shall report to the department information relating to the impact of the proposed site on each department's area of expertise. The report may include opinions as to the advisability of granting, denying, or modifying the certificate. The department shall allocate funds obtained from filing fees to the departments making reports to reimburse them for the costs of compiling information and issuing the required report.

History: **En. Sec. 7, Ch. 327, L. 1973; amd. Sec. 3, Ch. 268, L. 1974; amd. Sec. 39, Ch. 213, L. 1975; amd. Sec. 7, Ch. 494, L. 1975; R.C.M. 1945, 70-807(1), (2); amd. Sec. 2, Ch. 218, L. 1979; amd. Sec. 8, Ch. 676, L. 1979; amd. Sec. 6, Ch. 274, L. 1981; amd. Sec. 4, Ch. 539, L. 1981.**

Compiler's Comments

1981 Amendments: Chapter 274 substituted "department of commerce" for "department of community affairs" in (5).

Chapter 539 inserted "or department of health" after "the board of health" in the middle of the first sentence of (3); substituted "permit required under the laws administered by the department of health or board of health and this chapter" for "permit required by state or federal air and water quality laws and this chapter" at the end of the first sentence of (3); substituted "the board of health shall determine compliance with all standards, permit requirements, and implementation plans under their jurisdiction" for "the board of health shall determine compliance with air and water quality standards and implementation plans" in the second sentence of (3); deleted "of air and water quality impacts under the federal and state air and water quality statutes" after "The decision, opinion, order, certification, or permit, with or without conditions, is conclusive on all matters" in the third sentence of (3); substituted "specified in subsections (2) through (7) of 75-20-503" for "specified in 75-20-503(3) and (4)" in the third sentence of (3); substituted "the determinations made under the laws administered by the department of health and the board of health" for "the determinations made under federal and state air and water quality statutes" at the end of the third sentence of (3); and deleted "A decision by the department of health or board of health is subject to appellate review pursuant to the air and water quality statutes administered by the department of health and board of health" at the end of (3).

Transfer of Function: Section 6, Ch. 274, L. 1981, provided in part: "(1) The department of community affairs is abolished.

(2) The following functions of the department of community affairs are transferred to the department of commerce: . . .

(e) relating to recommendations concerning major facility siting and contained in 75-20-211, 75-20-216, and 75-20-501; . . ."

Effective Date: Section 9, Ch. 539, L. 1981, provided: "This act is effective on passage and approval." Approved April 29, 1981.

75-20-217. Voiding an application. An application may be voided by the department for:

(1) any material and knowingly false statement in the application or in accompanying statements or studies required of the applicant;

(2) failure to file an application in substantially the form and content required by this chapter and the rules adopted thereunder; or

(3) failure to deposit the filing fee as provided in 75-20-215.

History: **En. Sec. 18, Ch. 327, L. 1973; amd. Sec. 18, Ch. 494, L. 1975; R.C.M. 1947, 70-818(2); amd. Sec. 9, Ch. 676, L. 1979.**

75-20-218. Hearing date — location — department to act as staff — hearings to be held jointly. (1) Upon receipt of the department's report submitted under 75-20-216, the board shall set a date for a hearing to begin not more than 120 days after the receipt. Except for those hearings involving applications submitted for facilities as defined in (b) and (c) of 75-20-104(10), certification hearings shall be conducted by the board in the county seat of Lewis and Clark County or the county in which the facility or the greater portion thereof is to be located.

(2) Except as provided in 75-20-221(2), the department shall act as the staff for the board throughout the decisionmaking process and the board may

request the department to present testimony or cross-examine witnesses as the board considers necessary and appropriate.

(3) At the request of the applicant, the department of health and the board of health shall hold any required permit hearings required under laws administered by those agencies in conjunction with the board certification hearing. In such a conjunctive hearing the time periods established for reviewing an application and for issuing a decision on certification of a proposed facility under this chapter supersede the time periods specified in other laws administered by the department of health and the board of health.

History: En. Sec. 7, Ch. 327, L. 1973; amd. Sec. 3, Ch. 268, L. 1974; amd. Sec. 39, Ch. 213, L. 1975; amd. Sec. 7, Ch. 494, L. 1975; R.C.M. 1947, 70-807(4); amd. Sec. 10, Ch. 676, L. 1979; amd. Sec. 5, Ch. 539, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department of health and the board of health" for "duly authorized state air and water quality agencies" near the beginning and at the end of (3).

Effective Date: Section 9, Ch. 539, L. 1981, provided: "This act is effective on passage and approval." Approved April 29, 1981.

75-20-219. Amendments to a certificate. (1) Within 30 days after notice of an amendment to a certificate is given as set forth in 75-20-213(1), including notice to all active parties to the original proceeding, the department shall determine whether the proposed change in the facility would result in any material increase in any environmental impact of the facility or a substantial change in the location of all or a portion of the facility other than as provided in the alternates set forth in the original application. If the department determines that the proposed change would result in any material increase in any environmental impact of the facility or a substantial change in the location of all or a portion of the facility, the board shall hold a hearing in the same manner as a hearing is held on an application for a certificate. After hearing, the board shall grant, deny, or modify the amendment with such conditions as it deems appropriate.

(2) In those cases where the department determines that the proposed change in the facility would not result in any material increase in any environmental impact or would not be a substantial change in the location of all or a portion of the facility, the board shall automatically grant the amendment either as applied for or upon such terms or conditions as the board considers appropriate unless the department's determination is appealed to the board within 15 days after notice of the department's determination is given.

(3) If the department or the board under subsection (4) determines that a hearing is required because the proposed change would result in any material increase in any environmental impact of the facility or a substantial change in the location of all or a portion of the facility, the applicant has the burden of showing by clear and convincing evidence that the amendment should be granted.

(4) If the department determines that the proposed change in the facility would not result in any material increase in any environmental impact or would not be a substantial change in the location of all or a portion of the facility, and a hearing is required because the department's determination is appealed to the board as provided in subsection (2), the appellant has the

burden of showing by clear and convincing evidence that the proposed change in the facility would result in any material increase in any environmental impact of the facility or a substantial change in the location of all or a portion of the facility other than as provided in the alternates set forth in the original application.

(5) If an amendment is required to a certificate which would affect, amend, alter or modify a decision, opinion, order, certification, or permit issued by the department of health or board of health, such amendment must be processed under the applicable statutes administered by the department of health or board of health.

History: En. Sec. 7, Ch. 327, L. 1973; amd. Sec. 3, Ch. 268, L. 1974; amd. Sec. 39, Ch. 213, L. 1975; amd. Sec. 7, Ch. 494, L. 1975; R.C.M. 1947, 70-807(3); amd. Sec. 11, Ch. 676, L. 1979; amd. Sec. 1, Ch. 372, L. 1981.

Compiler's Comments

1981 Amendment: Substituted subsection (3) for "If a hearing is required, the applicant has the burden of showing by clear and convincing evidence that the amendment should be granted"; and inserted subsection (4).

75-20-220. Hearing examiner — restrictions — duties. (1) If the board appoints a hearing examiner to conduct any certification proceedings under this chapter, the hearing examiner may not be a member of the board, an employee of the department, or a member or employee of the department of health or board of health. A hearing examiner, if any, shall be appointed by the board within 20 days after the department's report has been filed with the board. If a hearing is held before the board of health or the department of health, the board and the board of health or the department of health shall mutually agree on the appointment of a hearing examiner to preside at both hearings.

(2) A prehearing conference shall be held following notice within 60 days after the department's report has been filed with the board.

(3) The prehearing conference shall be organized and supervised by the hearing examiner.

(4) The prehearing conference shall be directed toward a determination of the issues presented by the application, the department's report, and an identification of the witnesses and documentary exhibits to be presented by the active parties who intend to participate in the hearing.

(5) The hearing examiner shall require the active parties to submit, in writing, and serve upon the other active parties, all direct testimony which they propose and any studies, investigations, reports, or other exhibits that any active party wishes the board to consider. These written exhibits and any documents that the board itself wishes to use or rely on shall be submitted and served in like manner, at least 20 days prior to the date set for the hearing. For good cause shown, the hearing examiner may allow the introduction of new evidence at any time.

(6) The hearing examiner shall allow discovery which shall be completed before the commencement of the hearing, upon good cause shown and under such other conditions as the hearing examiner shall prescribe.

(7) Public witnesses and other interested public parties may appear and present oral testimony at the hearing or submit written testimony to the hearing examiner at the time of their appearance. These witnesses are subject to cross-examination.

(8) The hearing examiner shall issue a prehearing order specifying the issues of fact and of law, identifying the witnesses of the active parties, naming the public witnesses and other interested parties who have submitted written testimony in lieu of appearance, outlining the order in which the hearing shall proceed, setting forth those section 75-20-301 criteria as to which no issue of fact or law has been raised which are to be conclusively presumed and are not subject to further proof except for good cause shown, and any other special rules to expedite the hearing which the hearing examiner shall adopt with the approval of the board.

(9) At the conclusion of the hearing, the hearing examiner shall declare the hearing closed and shall, within 60 days of that date, prepare and submit to the board and in the case of a conjunctive hearing, within 90 days to the board and the board of health or department of health proposed findings of fact, conclusions of law, and a recommended decision.

(10) The hearing examiner appointed to conduct a certification proceeding under this chapter shall insure that the time of the proceeding, from the date the department's report is filed with the board until the recommended report and order of the examiner is filed with the board, does not exceed 9 calendar months unless extended by the board for good cause.

(11) The board or hearing examiner may waive all or a portion of the procedures set forth in subsections (2) through (8) of this section to expedite the hearing for a facility when the department has recommended approval of a facility and no objections have been filed.

History: En. Sec. 9, Ch. 327, L. 1973; amd. Sec. 9, Ch. 494, L. 1975; R.C.M. 1947, 70-809(3); amd. Sec. 12, Ch. 676, L. 1979; amd. Sec. 6, Ch. 539, L. 1981.

Compiler's Comments

1981 Amendment: Inserted "or the department of health" after "board of health" throughout the last sentence of (1) and near the end of (9).

Effective Date: Section 9, Ch. 539, L. 1981, provided: "This act is effective on passage and approval." Approved April 29, 1981.

75-20-221. Parties to certification proceeding — waiver — statement of intent to participate. (1) The parties to a certification proceeding or to a proceeding involving the issuance of a decision, opinion, order, certification, or permit by the board of health under this chapter may include as active parties:

(a) the applicant;

(b) each political entity, unit of local government, and government agency, including the department of health, entitled to receive service of a copy of the application under 75-20-211(3);

(c) any person entitled to receive service of a copy of the application under 75-20-211(5);

(d) any nonprofit organization formed in whole or in part to promote conservation or natural beauty; to protect the environment, personal health, or other biological values; to preserve historical sites; to promote consumer interests; to represent commercial and industrial groups; or to promote the orderly development of the areas in which the facility is to be located;

(e) any other interested person who establishes an interest in the proceeding.

(2) The department shall be an active party in any certification proceeding in which the department recommends denial of all or a portion of a facility.

(3) The parties to a certification proceeding may also include, as public parties, any Montana citizen and any party referred to in (b), (c), (d), or (e) of subsection (1).

(4) Any party waives the right to be a party if the party does not participate in the hearing before the board or the board of health.

(5) Each unit of local government entitled to receive service of a copy of the application under 75-20-211(3) shall file with the board a statement showing whether the unit of local government intends to participate in the certification proceeding. If the unit of local government does not intend to particpate, it shall list in this statement its reasons for failing to do so. This statement of intent shall be published before the proceeding begins in a newspaper of general circulation within the jurisdiction of the applicable unit of local government.

History: En. Sec. 8, Ch. 327, L. 1973; amd. Sec. 8, Ch. 494, L. 1975; R.C.M. 1947, 70-808; amd. Sec. 2, Ch. 553, L. 1979; amd. Sec. 13, Ch. 676, L. 1979.

75-20-222. Record of hearing — procedure — rules of evidence — burden of proof. (1) Any studies, investigations, reports, or other documentary evidence, including those prepared by the department, which any party wishes the board to consider or which the board itself expects to utilize or rely upon shall be made a part of the record.

(2) A record shall be made of the hearing and of all testimony taken.

(3) In a certification proceeding held under this chapter, the applicant has the burden of showing by clear and convincing evidence that the application should be granted and that the criteria of 75-20-301 are met.

(4) All proceedings under this chapter are governed by the procedures set forth in this chapter, the procedural rules adopted by the board, and the Montana Rules of Evidence unless one or more rules of evidence are waived by the hearing examiner upon a showing of good cause by one or more of the parties to the hearing. No other rules of procedure or evidence shall apply except that the contested case procedures of the Montana Administrative Procedure Act shall apply if not in conflict with the procedures set forth in this chapter or the procedural rules adopted by the board.

History: En. Sec. 9, Ch. 327, L. 1973; amd. Sec. 9, Ch. 494, L. 1975; R.C.M. 1947, 70-809(1), (2); amd. Sec. 14, Ch. 676, L. 1979.

Part 3

Decisions

75-20-301. Decision of board — findings necessary for certification. (1) Within 60 days after submission of the recommended decision by the hearing examiner, the board shall make complete findings, issue an opinion, and render a decision upon the record, either granting or denying the application as filed or granting it upon such terms, conditions, or modifications of the construction, operation, or maintenance of the facility as the board considers appropriate.

(2) The board may not grant a certificate either as proposed by the applicant or as modified by the board unless it shall find and determine:

(a) the basis of the need for the facility;

(b) the nature of the probable environmental impact;

(c) that the facility represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives;

(d) each of the criteria listed in 75-20-503;

(e) in the case of an electric, gas, or liquid transmission line or aqueduct:

(i) what part, if any, of the line or aqueduct shall be located underground;

(ii) that the facility is consistent with regional plans for expansion of the appropriate grid of the utility systems serving the state and interconnected utility systems; and

(iii) that the facility will serve the interests of utility system economy and reliability;

(f) that the location of the facility as proposed conforms to applicable state and local laws and regulations issued thereunder, except that the board may refuse to apply any local law or regulation if it finds that, as applied to the proposed facility, the law or regulation is unreasonably restrictive in view of the existing technology, of factors of cost or economics, or of the needs of consumers, whether located inside or outside of the directly affected government subdivisions;

(g) that the facility will serve the public interest, convenience, and necessity;

(h) that the department of health or board of health have issued a decision, opinion, order, certification, or permit as required by 75-20-216(3); and

(i) that the use of public lands for location of the facility was evaluated and public lands were selected whenever their use is as economically practicable as the use of private lands and compatible with the environmental criteria listed in 75-20-503.

(3) In determining that the facility will serve the public interest, convenience, and necessity under subsection (2)(g) of this section, the board shall consider:

(a) the items listed in subsections (2)(a) and (2)(b) of this section;

(b) the benefits to the applicant and the state resulting from the proposed facility;

(c) the effects of the economic activity resulting from the proposed facility;

(d) the effects of the proposed facility on the public health, welfare, and safety;

(e) any other factors that it considers relevant.

(4) Considerations of need, public need, or public convenience and necessity and demonstration thereof by the applicant shall apply only to utility facilities.

History: **En. Sec. 10, Ch. 327, L. 1973; amd. Sec. 10, Ch. 494, L. 1975; R.C.M. 1947, 70-810(1), (3), (4); amd. Sec. 1, Ch. 69, L. 1979; amd. Sec. 15, Ch. 676, L. 1979.**

75-20-302. Conditions imposed. If the board determines that the location of all or a part of the proposed facility should be modified, it may condition its certificate upon such modification, provided that the persons residing in the area affected by the modification have been given reasonable notice of the modification.

History: **En. Sec. 10, Ch. 327, L. 1973; amd. Sec. 10, Ch. 494, L. 1975; R.C.M. 1947, 70-810(2); amd. Sec. 16, Ch. 676, L. 1979.**

75-20-303. Opinion issued with decision — contents. (1) In rendering a decision on an application for a certificate, the board shall issue an opinion stating its reasons for the action taken.

(2) If the board has found that any regional or local law or regulation which would be otherwise applicable is unreasonably restrictive pursuant to 75-20-301(2)(f), it shall state in its opinion the reasons therefor.

(3) Any certificate issued by the board shall include the following:

(a) an environmental evaluation statement related to the facility being certified. The statement shall include but not be limited to analysis of the following information:

(i) the environmental impact of the proposed facility;

(ii) any adverse environmental effects which cannot be avoided by issuance of the certificate;

(iii) problems and objections raised by other federal and state agencies and interested groups;

(iv) alternatives to the proposed facility;

(v) a plan for monitoring environmental effects of the proposed facility; and

(vi) a time limit as provided in subsection (4), during which construction of the facility must be completed;

(b) a statement signed by the applicant showing agreement to comply with the requirements of this chapter and the conditions of the certificate.

(4) The board shall issue as part of the certificate the following time limits during which construction of a facility must be completed:

(a) For a facility as defined in (b) or (c) of 75-20-104(7) that is more than 30 miles in length, the time limit is 10 years.

(b) For a facility as defined in (b) or (c) of 75-20-104(7) that is 30 miles or less in length, the time limit is 5 years.

(c) The time limit shall be extended for periods of 2 years each upon a showing by the applicant to the board that a good faith effort is being undertaken to complete construction. Under this subsection, a good faith effort to complete construction includes the process of acquiring any necessary state or federal permit or certificate for the facility and the process of judicial review of any such permit or certificate.

(5) The provisions of subsection (4) apply to any facility for which a certificate has not been issued or for which construction is yet to be commenced.

History: En. Sec. 11, Ch. 327, L. 1973; amd. Sec. 11, Ch. 494, L. 1975; R.C.M. 1947, 70-811(1), (2); amd. Sec. 1, Ch. 120, L. 1979.

Compiler's Comments

Effective date. Sec. 2, Ch. 120, L. 1979, provided: "This act is effective on passage and approval." Approved March 19, 1979."

75-20-304. Waiver of provisions of certification proceedings. (1) The board may waive compliance with any of the provisions of 75-20-216 through 75-20-222, 75-20-501, and this part if the applicant makes a clear and convincing showing to the board at a public hearing that an immediate, urgent need for a facility exists and that the applicant did not have knowledge that the need for the facility existed sufficiently in advance to fully comply with the provisions of 75-20-216 through 75-20-222, 75-20-501, and this part.

(2) The board may waive compliance with any of the provisions of this chapter upon receipt of notice by a utility or person subject to this chapter that a facility or associated facility has been damaged or destroyed as a result of fire, flood, or other natural disaster or as the result of insurrection, war, or other civil disorder and there exists an immediate need for construction of a new facility or associated facility or the relocation of a previously existing facility or associated facility in order to promote the public welfare.

(3) The board shall waive compliance with the requirements of subsections (2)(c), (3)(b), and (3)(c) of 75-20-301 and 75-20-501(5) and the requirements of subsections (1)(a)(iv) and (v) of 75-20-211, 75-20-216(3), and 75-20-303(3)(a)(iv) relating to consideration of alternative sites if the applicant makes a clear and convincing showing to the board at a public hearing that:

(a) a proposed facility will be constructed in a county where a single employer within the county has permanently curtailed or ceased operations causing a loss of 250 or more permanent jobs within 2 years at the employer's operations within the preceding 10-year period;

(b) the county and municipal governing bodies in whose jurisdiction the facility is proposed to be located support by resolution such a waiver;

(c) the proposed facility will be constructed within a 15-mile radius of the operations that have ceased or been curtailed; and

(d) the proposed facility will have a beneficial effect on the economy of the county in which the facility is proposed to be located.

(4) The waiver provided for in subsection (3) applies only to permanent job losses by a single employer. The waiver provided for in subsection (3) does not apply to jobs of a temporary or seasonal nature, including but not limited to construction jobs or job losses during labor disputes.

(5) The waiver provided for in subsection (3) does not apply to consideration of alternatives or minimum adverse environmental impact for a facility defined in subsections (10)(b), (c), (d), or (e) of 75-20-104, for an associated facility defined in subsection (3) of 75-20-104, or for any portion of or process in a facility defined in subsection (10)(a) of 75-20-104 to the extent that the process or portion of the facility is not subject to a permit issued by the department of health or board of health.

(6) The applicant shall pay all expenses required to process and conduct a hearing on a waiver request under subsection (3). However, any payments made under this subsection shall be credited toward the fee paid under 75-20-215 to the extent the data or evidence presented at the hearing or the decision of the board under subsection (3) can be used in making a certification decision under this chapter.

(7) The board may grant only one waiver under subsections (3) and (4) for each permanent loss of jobs as defined in subsection (3)(a).

History: En. Sec. 11, Ch. 327, L. 1973; amd. Sec. 11, Ch. 494, L. 1975; R.C.M. 1947, 70-811(3), (4); amd. Sec. 17, Ch. 676, L. 1979; amd. Sec. 7, Ch. 539, L. 1981.

Compiler's Comments

1981 Amendment: Added subsections (3) through (7).

Effective Date: Section 9, Ch. 539, L. 1981, provided: "This act is effective on passage and approval." Approved April 29, 1981.

Part 4

Postcertification and Legal Responsibilities

75-20-401. Additional requirements by other governmental agencies not permitted after issuance of certificate — exceptions. (1) Notwithstanding any other law, no state or regional agency or municipality or other local government may require any approval, consent, permit, certificate, or other condition for the construction, operation, or maintenance of a facility authorized by a certificate issued pursuant to this chapter, except that the state air and water quality agency or agencies shall retain authority which they have or may be granted to determine compliance of the proposed facility with state and federal standards and implementation plans for air and water quality and to enforce those standards.

(2) This chapter does not prevent the application of state laws for the protection of employees engaged in the construction, operation, or maintenance of a facility.

History: En. Sec. 17, Ch. 327, L. 1973; amd. Sec. 17, Ch. 494, L. 1975; R.C.M. 1947, 70-817; amd. Sec. 18, Ch. 676, L. 1979.

75-20-402. Monitoring. The board, the department, the department of health, and the board of health shall monitor the operations of all certificated facilities for assuring continuing compliance with this chapter and certificates issued hereunder and for discovering and preventing noncompliance with this chapter and the certificates. The applicant shall pay all expenses related to the monitoring plan established in subsection (3)(a)(v) of 75-20-303 to the extent federal funds available for the facility, as determined by the department of health, have not been provided for such purposes.

History: En. Sec. 20, Ch. 327, L. 1973; amd. Sec. 4, Ch. 268, L. 1974; amd. Sec. 20, Ch. 494, L. 1975; R.C.M. 1947, 70-820(2); amd. Sec. 19, Ch. 676, L. 1979.

75-20-403. Revocation or suspension of certificate. A certificate may be revoked or suspended by the board:

(1) for any material false statement in the application or in accompanying statements or studies required of the applicant if a true statement would have warranted the board's refusal to grant a certificate;

(2) for failure to maintain safety standards or to comply with the terms or conditions of the certificate; or

(3) for violation of any provision of this chapter, the rules issued thereunder, or orders of the board or department.

History: En. Sec. 18, Ch. 327, L. 1973; amd. Sec. 18, Ch. 494, L. 1975; R.C.M. 1947, 70-818(1).

75-20-404. Enforcement of chapter by residents. (1) A resident of this state with knowledge that a requirement of this chapter or a rule adopted under it is not being enforced by a public officer or employee whose duty it is to enforce the requirement or rule may bring the failure to enforce to the attention of the public officer or employee by a written statement under oath that shall state the specific facts of the failure to enforce the requirement or rule. Knowingly making false statements or charges in the affidavit subjects the affiant to penalties prescribed under the law of perjury.

(2) If the public officer or employee neglects or refuses for an unreasonable time after receipt of the statement to enforce the requirement or rule,

the resident may bring an action of mandamus in the district court of the first judicial district of this state, in and for the county of Lewis and Clark. If the court finds that a requirement of this chapter or a rule adopted under it is not being enforced, the court may order the public officer or employee whose duty it is to enforce the requirement or rule to perform his duties. If he fails to do so, the public officer or employee shall be held in contempt of court and is subject to the penalties provided by law.

History: **En. Sec. 19, Ch. 327, L. 1973; amd. Sec. 19, Ch. 494, L. 1975; R.C.M. 1947, 70-819(1), (2).**

75-20-405. Action to recover damages to water supply. An owner of an interest in real property who obtains all or part of his supply of water for domestic, agricultural, industrial, or other legitimate use from a surface or underground source may sue a person to recover damages for contamination, diminution, or interruption of the water supply proximately resulting from the operation of a facility. The remedies enumerated in this section do not exclude the use of any other remedy which may be available under the laws of the state.

History: **En. Sec. 19, Ch. 327, L. 1973; amd. Sec. 19, Ch. 494, L. 1975; R.C.M. 1947, 70-819(3).**

75-20-406. Judicial review of board, board of health, and department of health decisions. (1) Any active party as defined in 75-20-221 aggrieved by the final decision of the board on an application for a certificate may obtain judicial review of that decision by the filing of a petition in a state district court of competent jurisdiction.

(2) The judicial review procedure shall be the same as that for contested cases under the Montana Administrative Procedure Act.

(3) When the board of health or department of health conducts hearings pursuant to 75-20-216(3) and 75-20-218 and the applicant is granted a permit or certification, with or without conditions, pursuant to the laws administered by the department of health and the board of health and this chapter, the decision may only be appealed in conjunction with the final decision of the board as provided in subsections (1) and (2). If a permit or certification is denied by the department of health or the board of health, the applicant may:

(a) appeal the denial under the appellate review procedures provided in the laws administered by the department of health and the board of health; or

(b) reserve the right to appeal the denial by the department of health or the board of health until after the board has issued a final decision.

(4) Nothing in this section may be construed to prohibit the board from holding a hearing as herein provided on all matters that are not the subject of a pending appeal by the applicant under subsection (3)(a).

History: **En. Sec. 12, Ch. 327, L. 1973; amd. Sec. 12, Ch. 494, L. 1975; R.C.M. 1947, 70-812; amd. Sec. 20, Ch. 676, L. 1979; amd. Sec. 8, Ch. 539, L. 1981.**

Compiler's Comments

1981 Amendment: Added subsections (3) and (4).

Effective Date: Section 9, Ch. 539, L. 1981, provided: "This act is effective on passage and approval." Approved April 29, 1981.

75-20-407. Jurisdiction of courts restricted. Except as expressly set forth in 75-20-401, 75-20-406, and 75-20-408, no court of this state has jurisdiction to hear or determine any issue, case, or controversy concerning any matter which was or could have been determined in a proceeding before the board under this chapter or to stop or delay the construction, operation, or maintenance of a facility, except to enforce compliance with this chapter or the provisions of a certificate issued hereunder pursuant to 75-20-404 and 75-20-405 or 75-20-408.

History: **En. Sec. 13, Ch. 327, L. 1973; amd. Sec. 13, Ch. 494, L. 1975; R.C.M. 1947, 70-813.**

75-20-408. Penalties for violation of chapter — civil action by attorney general. (1) (a) Whoever commences to construct or operate a facility without first obtaining a certificate required under 75-20-201 or a waiver thereof under 75-20-304(2) or having first obtained a certificate, constructs, operates, or maintains a facility other than in compliance with the certificate or violates any other provision of this chapter or any rule or order adopted thereunder or knowingly submits false information in any report, 10-year plan, or application required by this chapter or rule or order adopted thereunder or causes any of the aforementioned acts to occur is liable for a civil penalty of not more than $10,000 for each violation.

(b) Each day of a continuing violation constitutes a separate offense.

(c) The penalty is recoverable in a civil suit brought by the attorney general on behalf of the state in the district court of the first judicial district of Montana.

(2) Whoever knowingly and willfully violates subsection (1) shall be fined not more than $10,000 for each violation or imprisoned for not more than 1 year, or both. Each day of a continuing violation constitutes a separate offense.

(3) In addition to any penalty provided in subsections (1) or (2), whenever the department determines that a person is violating or is about to violate any of the provisions of this section, it may refer the matter to the attorney general who may bring a civil action on behalf of the state in the district court of the first judicial district of Montana for injunctive or other appropriate relief against the violation and to enforce this chapter or a certificate issued hereunder. Upon a proper showing, a permanent or preliminary injunction or temporary restraining order shall be granted without bond.

(4) The department shall also enforce this chapter and bring legal actions to accomplish the enforcement through its own legal counsel.

(5) All fines and penalties collected shall be deposited in the earmarked revenue fund for the use of the department in administering this chapter.

History: **En. Sec. 21, Ch. 327, L. 1973; amd. Sec. 2, Ch. 270 L. 1975; amd. Sec. 21, Ch. 494, L. 1975; R.C.M. 1947, 70-821; amd. Sec. 16, Ch. 68, L. 1979; amd. Sec. 21, Ch. 676, L. 1979.**

75-20-409. Optional annual installments for location of facility on landowner's property. A landowner upon whose land a facility is proposed to be located shall have the option of receiving any negotiated settlement for use of his land, if and when the land is used for a facility, by easement, right-of-way, or other legal conveyance in either a lump sum or in not more than five consecutive annual installments.

History: **En. Sec. 1, Ch. 71, L. 1979.**

75-20-410. Order not stayed by appeal — stay or suspension by court — limitations. Notwithstanding any contrary provision in the law, the pendency of an appeal from a board order does not automatically stay or suspend the operation of the order. During the pendency of the appeal, the court may upon motion by one of the parties stay or suspend, in whole or in part, the operation of the board's orders on terms the court considers just. The court's action must be in accordance with the practice of courts exercising equity jurisdiction, subject to the following limitations:

(1) No stay may be granted without notice to the parties and an opportunity to be heard by the court.

(2) No board order may be stayed or suspended without finding that irreparable damage would otherwise result to the party seeking the stay or suspension, and any other stay or suspension of a board order must specify the nature of the damage.

History: En. Sec. 24, Ch. 676, L. 1979.

Compiler's Comments

Codification. Sec. 27, Ch. 676, L. 1979, provided: "It is the intent of the legislature that sections 24 and 25 become an integral part of Title 75, chapter 20, MCA, and that the provisions of that chapter apply to sections 24 and 25." Sections 24 and 25 are codified as 75-20-410 and 75-20-411.

75-20-411. Surety bond — other security. If an order of the board is stayed or suspended, the court may require a bond with good and sufficient surety conditioned that the party petitioning for review answer for all damages caused by the delay in enforcing the order of the board; except that the cost of the bond is not chargeable to the applicant as part of the fee. If the party petitioning for review prevails upon final resolution of an appeal, he does not forfeit bond nor is he responsible for damages caused by delay.

History: En. Sec. 25, Ch. 676, L. 1979.

Compiler's Comments

Codification. Sec. 27, Ch. 676, L. 1979, provided: "It is the intent of the legislature that sections 24 and 25 become an integral part of Title 75, chapter 20, MCA, and that the provisions of that chapter apply to sections 24 and 25." Sections 24 and 25 are codified as 75-20-410 and 75-20-411.

Part 5

Long-Range Plans

75-20-501. Annual long-range plan submitted — contents — available to public. (1) Each utility and each person contemplating the construction of a facility within this state in the ensuing 10 years shall furnish annually to the department for its review a long-range plan for the construction and operation of facilities.

(2) The plan shall be submitted by April 1 of each year and must include the following:

(a) the general location, size, and type of all facilities to be owned and operated by the utility or person whose construction is projected to commence during the ensuing 10 years, as well as those facilities to be removed from service during the planning period;

(b) in the case of utility facilities, a description of efforts by the utility or person to coordinate the plan with other utilities or persons so as to provide a coordinated regional plan for meeting the energy needs of the region;

(c) a description of the efforts to involve environmental protection and land use planning agencies in the planning process, as well as other efforts to identify and minimize environmental problems at the earliest possible stage in the planning process;

(d) projections of the demand for the service rendered by the utility or person and explanation of the basis for those projections and a description of the manner and extent to which the proposed facilities will meet the projected demand; and

(e) additional information that the board by rule or the department on its own initiative or upon the advice of interested state agencies might request in order to carry out the purposes of this chapter.

(3) The plan shall be furnished to the governing body of each county in which any facility included in the plan under (2)(a) of this section is proposed to be located and made available to the public by the department. The utility or person shall give public notice throughout the state of its plan by filing the plan with the environmental quality council, the department of health and environmental sciences, the department of highways, the department of public service regulation, the department of state lands, the department of fish, wildlife, and parks, and the department of commerce. Citizen environmental protection and resource planning groups and other interested persons may obtain a plan by written request and payment therefor to the department.

(4) A rural electric cooperative may furnish the department with a copy of the long-range plan and 2-year work plan required to be completed under federal rural electrification requirements in lieu of the long-range plan required in subsection (1).

(5) No person may file an application for a facility unless the facility had been adequately identified in a long-range plan at least 2 years prior to acceptance of an application by the department.

History: En. Sec. 14, Ch. 327, L. 1973; amd. Sec. 40, Ch. 213, L. 1975; amd. Sec. 14, Ch. 494, L. 1975; R.C.M. 1947, 70-814; amd. Sec. 17, Ch. 68, L. 1979; amd. Sec. 3, Ch. 553, L. 1979; amd. Sec. 22, Ch. 676, L. 1979; amd. Sec. 6, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department of commerce" for "department of community affairs" in (3).

Transfer of Function: Section 6, Ch. 274, L. 1981, provided in part: "(1) The department of community affairs is abolished.

(2) The following functions of the department of community affairs are transferred to the department of commerce: . . .

(e) relating to recommendations concerning major facility siting and contained in 75-20-211, 75-20-216, and 75-20-501; . . ."

75-20-502. Study of included facilities. If a utility or person lists and identifies a proposed facility in its plan, submitted pursuant to 75-20-501, as one on which construction is proposed to be commenced within the 5-year period following submission of the plan, the department shall commence examination and evaluation of the proposed site to determine whether construction of the proposed facility would unduly impair the environmental values in 75-20-503. This study may be continued until such time as a person files an application for a certificate under 75-20-211. Information gathered under this section may be used to support findings and recommendations required for issuance of a certificate.

History: En. Sec. 15, Ch. 327, L. 1973; amd. Sec. 15, Ch. 494, L. 1975; R.C.M. 1947, 70-815.

75-20-503. Environmental factors evaluated. In evaluating long-range plans, conducting 5-year site reviews, and evaluating applications for certificates, the board and department shall give consideration to the following list of environmental factors, where applicable, and may by rule add to the categories of this section:

(1) energy needs:

(a) growth in demand and projections of need;

(b) availability and desirability of alternative sources of energy;

(c) availability and desirability of alternative sources of energy in lieu of the proposed facility;

(d) promotional activities of the utility which may have given rise to the need for this facility;

(e) socially beneficial uses of the output of this facility, including its uses to protect or enhance environmental quality;

(f) conservation activities which could reduce the need for more energy;

(g) research activities of the utility of new technology available to it which might minimize environmental impact;

(2) land use impacts:

(a) area of land required and ultimate use;

(b) consistency with areawide state and regional land use plans;

(c) consistency with existing and projected nearby land use;

(d) alternative uses of the site;

(e) impact on population already in the area, population attracted by construction or operation of the facility itself;

(f) impact of availability of energy from this facility on growth patterns and population dispersal;

(g) geologic suitability of the site or route;

(h) seismologic characteristics;

(i) construction practices;

(j) extent of erosion, scouring, wasting of land, both at site and as a result of fossil fuel demands of the facility;

(k) corridor design and construction precautions for transmission lines or aqueducts;

(l) scenic impacts;

(m) effects on natural systems, wildlife, plant life;

(n) impacts on important historic architectural, archeological, and cultural areas and features;

(o) extent of recreation opportunities and related compatible uses;

(p) public recreation plan for the project;

(q) public facilities and accommodation;

(r) opportunities for joint use with energy-intensive industries or other activities to utilize the waste heat from facilities;

(s) opportunities for using public lands for location of facilities whenever as economically practicable as the use of private lands and compatible with the requirements of this section;

(3) water resources impacts:

(a) hydrologic studies of adequacy of water supply and impact of facility on streamflow, lakes, and reservoirs;

(b) hydrologic studies of impact of facilities on groundwater;

(c) cooling system evaluation, including consideration of alternatives;

(d) inventory of effluents, including physical, chemical, biological, and radiological characteristics;

(e) hydrologic studies of effects of effluents on receiving waters, including mixing characteristics of receiving waters, changed evaporation due to temperature differentials, and effect of discharge on bottom sediments;

(f) relationship to water quality standards;

(g) effects of changes in quantity and quality on water use by others, including both withdrawal and in situ uses;

(h) relationship to projected uses;

(i) relationship to water rights;

(j) effects on plant and animal life, including algae, macroinvertebrates, and fish population;

(k) effects on unique or otherwise significant ecosystems, e.g., wetlands;

(l) monitoring programs;

(4) air quality impacts:

(a) meteorology—wind direction and velocity, ambient temperature ranges, precipitation values, inversion occurrence, other effects on dispersion;

(b) topography—factors affecting dispersion;

(c) standards in effect and projected for emissions;

(d) design capability to meet standards;

(e) emissions and controls:

(i) stack design;

(ii) particulates;

(iii) sulfur oxides;

(iv) oxides of nitrogen; and

(v) heavy metals, trace elements, radioactive materials, and other toxic substances;

(f) relationship to present and projected air quality of the area;

(g) monitoring program;

(5) solid wastes impacts:

(a) solid waste inventory;

(b) disposal program;

(c) relationship of disposal practices to environmental quality criteria;

(d) capacity of disposal sites to accept projected waste loadings;

(6) radiation impacts:

(a) land use controls over development and population;

(b) wastes and associated disposal program for solid, liquid, radioactive, and gaseous wastes;

(c) analyses and studies of the adequacy of engineering safeguards and operating procedures;

(d) monitoring—adequacy of devices and sampling techniques;

(7) noise impacts:

(a) construction period levels;

(b) operational levels;

(c) relationship of present and projected noise levels to existing and potential stricter noise standards;

(d) monitoring—adequacy of devices and methods.

History: En. Sec. 16, Ch. 327, L. 1973; amd. Sec. 16, Ch. 494, L. 1975; R.C.M. 1947, 70-816; amd. Sec. 2, Ch. 69, L. 1979; amd. Sec. 23, Ch. 676, L. 1979.

Parts 6 through 9 reserved

Part 10

Geothermal Exploration

75-20-1001. Geothermal exploration — notification of department. The board shall adopt rules requiring every person who proposes to gather geological data by boring of test holes or other underground exploration, investigation, or experimentation related to the possible future development of a facility employing geothermal resources to comply with the following requirements:

(1) notify the department of the proposed action;

(2) submit to the department a description of the area involved;

(3) submit to the department a statement of the proposed activities to be conducted and the methods to be utilized;

(4) submit to the department geological data reports at such times as may be required by the rules; and

(5) submit such other information as the board may require in the rules.

History: En. Sec. 20, Ch. 327, L. 1973; amd. Sec. 4, Ch. 268, L. 1974; amd. Sec. 20, Ch. 494, L. 1975; R.C.M. 1947, 70-820(3).

Part 11

Energy Conversion Facility
(Repealed. Sec. 28, Ch. 676, L. 1979)

Part Compiler's Comments

Histories of Repealed Sections:

75-20-1101 through 75-20-1105. En. 70-825 through 70-829 by Sec. 1 through 5, Ch. 517, L. 1975; R.C.M. 1947, 70-825 through 70-829.

Part 12

Nuclear Energy Conversion

75-20-1201. Purpose — findings as to nuclear safety — reservation of nuclear facility approval powers to the people. (1) The people of Montana find that substantial public concern exists regarding nuclear reactors and other major nuclear facilities, including the following unresolved issues:

(a) the generation of waste from nuclear facilities, which remains a severe radiological hazard for many thousands of years and to which no means of containment assuring the protection of future generations exists;

(b) the spending of scarce capital to pay the rapidly increasing costs of nuclear facilities, preventing the use of that capital to finance renewable energy sources which hold more promise for supplying useful energy, providing jobs, and holding down energy costs;

(c) the liability of nuclear facilities to sudden catastrophic accidents which can affect large areas of the state, thousands of people, and countless future generations;

(d) the refusal of utilities, industry, and government to assume normal financial responsibility for compensating victims of such nuclear accidents;

(e) the impact of nuclear facilities on the proliferation of nuclear bombs and terrorism;

(f) the increasing pattern of abandonment of used nuclear facilities by their owners, resulting in radiological dangers to present and future societies as well as higher public costs for perpetual management; and

(g) the detrimental effect of the large uranium import program necessary to the expansion of nuclear power on American energy independence, defense policy, and economic well being.

(2) Therefore, the people of Montana reserve to themselves the exclusive right to determine whether major nuclear facilities are built and operated in this state.

History: **En. Sec. 1, I.M. 80, app. Nov. 7, 1978.**

Compiler's Comments

Severability. Section 7 of Initiative 80 was a severability clause.

Effective date. Initiative 80 was approved at the general election held November 7, 1978, and was effective July 1, 1979.

75-20-1202. Definitions. As used in this part and 75-20-201 through 75-20-203, the following definitions apply:

(1) (a) "Nuclear facility" means each plant, unit, or other facility designed for, or capable of,

(i) generating 50 megawatts of electricity or more by means of nuclear fission,

(ii) converting, enriching, fabricating, or reprocessing uranium minerals or nuclear fuels, or

(iii) storing or disposing of radioactive wastes or materials from a nuclear facility;

(b) "nuclear facility" does not include any small-scale facility used solely for educational, research, or medical purposes not connected with the commercial generation of energy.

(2) "Facility," as defined in 75-20-104(7) is further defined to include any nuclear facility as defined in subsection (1)(a) of this section.

History: **En. Sec. 2, I.M. 80, app. Nov. 7, 1978.**

75-20-1203. Additional requirements for issuance of a certificate for the siting of a nuclear facility. (1) The board may not issue a certificate to construct a nuclear facility unless it finds that:

(a) no legal limits exist regarding the rights of a person or group of persons to bring suit for and recover full and just compensation from the designers, manufacturers, distributors, owners, and/or operators of a nuclear facility for damages resulting from the existence or operation of the facility; and further, that no legal limits exist regarding the total compensation which may be required from the designers, manufacturers, distributors, owners, and/or operators of a nuclear facility for damages resulting from the existence or operation of such facility;

(b) the effectiveness of all safety systems, including but not limited to the emergency core cooling systems, of such nuclear facility has been demonstrated, to the satisfaction of the board, by the comprehensive laboratory testing of substantially similar physical systems in actual operation;

(c) the radioactive materials from such nuclear facilities can be contained with no reasonable chance, as determined by the board, of intentional or unintentional escape or diversion of such materials into the natural environment in such manner as to cause substantial or long-term harm or hazard to present or future generations due to imperfect storage technologies, earthquakes or other acts of God, theft, sabotage, acts of war or other social instabilities, or whatever other causes the board may deem to be reasonably possible, at any time during which such materials remain a radiological hazard; and

(d) the owner of such nuclear facility has posted with the board a bond totalling not less than 30% of the total capital cost of the facility, as estimated by the board, to pay for the decommissioning of the facility and the decontamination of any area contaminated with radioactive materials due to the existence or operation of the facility in the event the owner fails to pay the full costs of such decommissioning and decontamination. Excess bond, if any, shall be refunded to the owner upon demonstration, to the satisfaction of the board, that the site and environs of the facility pose no radiological danger to present or future generations and that whatever other conditions the board may deem reasonable have been met.

(2) Nothing in this section shall be construed as relieving the owner of a nuclear facility from full financial responsibility for the decommissioning of such facility and decontamination of any area contaminated with radioactive materials as a result of the existence or operation of such facility at any time during which such materials remain a radiological hazard.

History: **En. Sec. 4, I.M. 80, app. Nov. 7, 1978.**

75-20-1204. Annual review of evacuation and emergency medical aid plans. (1) The governor shall annually publish, publicize, and release to the news media and to the appropriate officials of affected communities, in a manner designed to inform residents of the affected communities, the entire evacuation plan specified in the licensing of each certified nuclear facility within this state. Copies of such plan shall be made available to the public upon request at no more than the cost of reproduction.

(2) The governor shall establish procedures for annual review by state and local officials of established evacuation and emergency medical aid plans with regard for, but not limited to, such factors as the adequacy of such plans, changes in traffic patterns, population densities, the locations of schools, hospitals, and industrial developments, and other factors as requested by locally elected representatives.

History: **En. Sec. 5, I.M. 80, app. Nov. 7, 1978.**

75-20-1205. Emergency approval authority invalid for nuclear facilities. Notwithstanding the provisions of subsections (2) and (3) of 75-20-304, the board may not waive compliance with any of the provisions of this part or 75-20-201 through 75-20-203 relating to certification of a nuclear facility.

History: **En. Sec. 6, I.M. 80, app. Nov. 7, 1978.**

TITLE 76

LAND RESOURCES AND USE

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2. Planning and Zoning.
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4. State Regulation of Subdivisions.
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6. Open Spaces.
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11. Natural Resources in General.
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16. Grazing Districts.

CHAPTER 1

PLANNING BOARDS

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Part 1

General Provisions

76-1-101. Planning boards authorized. The governing body of any city or town, the governing bodies of more than one city or town, or the governing body of any county or any combination thereof may create a planning board in order to promote the orderly development of its governmental units and its environs.

History: En. Sec. 1, Ch. 246, L. 1957; amd. Sec. 1, Ch. 247, L. 1963; amd. Sec. 2, Ch. 273, L. 1971; R.C.M. 1947, 11-3801(part).

76-1-102. Purpose. (1) It is the object of this chapter to encourage local units of government to improve the present health, safety, convenience, and welfare of their citizens and to plan for the future development of their communities to the end that highway systems be carefully planned; that new community centers grow only with adequate highway, utility, health, educational, and recreational facilities; that the needs of agriculture, industry, and business be recognized in future growth; that residential areas provide healthy surroundings for family life; and that the growth of the community be commensurate with and promotive of the efficient and economical use of public funds.

(2) In accomplishing this objective, it is the intent of this chapter that the planning board shall serve in an advisory capacity to presently established boards and officials.

History: En. Sec. 1, Ch. 246, L. 1957; amd. Sec. 1, Ch. 247, L. 1963; amd. Sec. 2, Ch. 273, L. 1971; R.C.M. 1947, 11-3801(part).

76-1-103. Definitions. As used in this chapter, the following definitions apply:

(1) "City" includes incorporated cities and towns.

(2) "City council" means the chief legislative body of a city or incorporated town.

(3) "Governing body" or "governing bodies" means the governing body of any governmental unit represented on a planning board.

(4) "Master plan" means a comprehensive development plan or any of its parts such as a plan of land use and zoning, of thoroughfares, of sanitation, of recreation, and of other related matters.

(5) "Mayor" means mayor of a city.

(6) "Person" means any individual, firm, or corporation.

(7) "Planning board" means a city planning board, a county planning board or a joint city-county planning board.

(8) "Plat" means a subdivision of land into lots, streets, and areas, marked upon the earth and represented on paper, and includes replats or amended plats.

(9) "Public place" means any tract owned by the state or its subdivisions.

(10) "Streets" includes streets, avenues, boulevards, roads, lanes, alleys, and all public ways.

(11) "Units of government" means any federal, state, or regional unit of government or any county, city, or town.

(12) "Utility" means any facility used in rendering service which the public has a right to demand.

History: En. Sec. 3, Ch. 246, L. 1957; amd. Sec. 2, Ch. 247, L. 1963; amd. Sec. 1, Ch. 349, L. 1973; R.C.M. 1947, 11-3803(part); amd. Sec. 1, Ch. 266, L. 1979.

76-1-104. Procedure to establish county planning board — protest. (1) Before a county planning board may be created, the board of county commissioners shall by resolution give public notice of their intent to create such planning board and of a public hearing thereon by publication of notice of time and place of hearing on such resolution in each newspaper published in the county not less than 15 or more than 30 days prior to the date of hearing.

(2) A resolution creating a county planning board shall not be adopted by the board of county commissioners if disapproved in writing, not later than 60 days after such hearing, by a majority of the qualified electors of the

county residing outside the limits of the jurisdictional area of an existing city-county planning board established pursuant to 76-1-504 through 76-1-507 and outside the incorporated limits of each city and town in the county.

History: En. Sec. 1, Ch. 246, L. 1957; amd. Sec. 1, Ch. 247, L. 1963; amd. Sec. 2, Ch. 273, L. 1971; R.C.M. 1947, 11-3801(part).

76-1-105. Role of county in formation of city planning board. (1) Prior to enacting an ordinance creating a city planning board, the city council shall notify in writing the county commissioners of the county in which the city is located of their intention to form a city planning board.

(2) The board of county commissioners shall elect to form a city-county planning board or to permit the city to form a city planning board and shall notify in writing the city council of its election within 30 days from receipt of notice of the city's intention to form a planning board. In the event the county commissioners so elect, the planning board to be so formed shall be a city-county planning board.

History: En. Sec. 5, Ch. 246, L. 1957; R.C.M. 1947, 11-3805.

76-1-106. Role of the planning board. (1) To assure the promotion of public health, safety, morals, convenience, order, or the general welfare and for the sake of efficiency and economy in the process of community development, the planning board shall prepare a master plan and shall serve in an advisory capacity to the local governing bodies establishing the planning board.

(2) The planning board may also propose policies for:

(a) subdivision plats;

(b) the development of public ways, public places, public structures, and public and private utilities;

(c) the issuance of improvement location permits on platted and unplatted lands;

(d) the laying out and development of public ways and services to platted and unplatted lands.

History: En. Sec. 28, Ch. 246, L. 1957; amd. Sec. 10, Ch. 247, L. 1963; R.C.M. 1947, 11-3828(1), (2).

76-1-107. Role of planning board in relation to subdivisions and plats. The governing body of any city, town, or county which has formed a planning board and adopted a comprehensive plan and subdivision regulations pursuant to this chapter and chapter 3 shall seek the advice of the appropriate planning board in all matters pertaining to the approval or disapproval of plats or subdivisions.

History: En. Sec. 2, Ch. 19, L. 1971; R.C.M. 1947, 11-3842.1.

76-1-108. City-county planning board as a zoning commission. The city council may in its discretion require the city-county planning board to function as the zoning commission authorized under 76-2-307.

History: En. Sec. 28, Ch. 246, L. 1957; amd. Sec. 10, Ch. 247, L. 1963; R.C.M. 1947, 11-3828(3).

76-1-109. Interaction of local government and city-county planning board. The governing bodies of the city or county shall give consideration to recommendations of the city-county planning board, but the governing bodies shall not be bound by such recommendations.

History: En. Sec. 28, Ch. 246, L. 1957; amd. Sec. 10, Ch. 247, L. 1963; R.C.M. 1947, 11-3828(4).

76-1-110. Cooperation with planning board by state and local governments. Whenever the board undertakes the preparation of a master plan, the departments and officials of state, city, county, and separate taxing units operating within lands under the jurisdiction of the board shall make available, upon the request of the board, such information, documents, and plans as have been prepared or, upon the request of the board, shall provide such information as relates to the board's activity.

History: **En. Sec. 29, Ch. 246, L. 1957; R.C.M. 1947, 11-3829.**

76-1-111. Representation of county or additional cities or towns on existing boards. (1) Any city, county, or town or any combination thereof wishing to be represented upon an existing planning board may, by agreement of the governing body or bodies then represented upon the board, obtain representation thereon and share in the membership duties and costs of the board upon a basis agreeable to the governing body or bodies creating the board.

(2) The membership as well as the jurisdictional area of any board may be increased to provide for representation and planning of any additional cities, counties, or towns seeking representation.

(3) Any city, county, or town which becomes represented upon an existing planning board pursuant to this section may appropriate funds for expenses necessary to cover the costs of such representation. The governing bodies of any city or county so being represented may levy on all property which is added to the jurisdictional area of an existing board by such representation a tax for planning board purposes under procedures set forth in Title 7, chapter 6, part 23 or part 42, whichever is applicable; provided such tax shall not exceed the maximum levy authorized in 76-1-402 through 76-1-407.

History: **En. Sec. 15, Ch. 246, L. 1957; amd. Sec. 6, Ch. 273, L. 1971; R.C.M. 1947, 11-3815.**

76-1-112. Joint or consolidated planning boards. (1) Any existing city, county, or city-county planning board may form a joint or consolidated planning board with any other existing city, county, or city-county planning board or with any combination of these boards.

(2) The manner of combination shall be by interlocal agreement of the cities, counties, and towns represented on the existing planning boards pursuant to Title 7, chapter 11, part 1.

(3) The interlocal agreement shall:

(a) state the name of the combined board;

(b) specify whether a joint or combined board is formed;

(c) specify the representation, means and manner of appointment, membership duties, and manner of sharing costs of the combined board which may be on any basis agreeable to the governing bodies of the cities, counties, and towns represented on the existing planning boards.

(4) If a consolidated board is formed, the existing city, county, and city-county planning boards shall be dissolved and the consolidated board shall have all of the rights, duties, powers, and obligations of the existing planning boards.

(5) If a joint board is formed, the existing planning boards shall not be dissolved and the joint board shall have such rights, duties, powers, and obligations as are set forth in the interlocal agreement.

History: **En. 11-3815.1 by Sec. 1, Ch. 101, L. 1975; R.C.M. 1947, 11-3815.1.**

76-1-113. Effect of chapter on natural resources. Nothing in this chapter shall be deemed to authorize an ordinance, resolution, or rule which would prevent the complete use, development, or recovery of any mineral, forest, or agricultural resources by the owner thereof.

History: En. Sec. 53, Ch. 246, L. 1957; amd. Sec. 6, Ch. 271, L. 1959; R.C.M. 1947, 11-3853.

Part 2

Membership

76-1-201. Membership of city-county planning board. A city-county planning board shall consist of not less than nine members to be appointed as follows:

(1) two official members who reside outside the city limits but within the jurisdictional area of the city-county planning board to be appointed by the board of county commissioners, who may in the discretion of the board of county commissioners be employed by or hold public office in the county;

(2) two official members who reside within the city limits to be appointed by the city council, who may in the discretion of the city council be employed by or hold public office in the city;

(3) two citizen members who reside within the city limits to be appointed by the mayor of the city;

(4) two citizen members who reside within the jurisdictional area of the city-county planning board to be appointed by the board of county commissioners;

(5) the ninth member to be selected by the eight officers and citizen members hereinabove provided for with the consent and approval of the board of county commissioners and the city council.

History: En. Sec. 10, Ch. 246, L. 1957; amd. Sec. 4, Ch. 247, L. 1963; amd. Sec. 1, Ch. 189, L. 1965; amd. Sec. 3, Ch. 273, L. 1971; amd. Sec. 2, Ch. 349, L. 1973; R.C.M. 1947, 11-3810(part); amd. Sec. 1, Ch. 192, L. 1979.

76-1-202. Qualifications of citizen members of city-county planning board. (1) The citizen members of the city-county planning board shall be resident freeholders in the area over which the planning board has jurisdiction; provided, however, that at least two of such members shall be resident freeholders in the area, if any, outside the city limits over which the planning board has jurisdiction and the two members appointed by the county commissioners shall reside outside the city limits but within the jurisdictional area of the planning board.

(2) Any citizen appointee may be removed from office by a majority vote of the governing body of the governmental unit represented by such appointee.

History: (1)Ap. p. Sec. 12, Ch. 246, L. 1957; amd. Sec. 2, Ch. 271, L. 1959; amd. Sec. 5, Ch. 273, L. 1971; Sec. 11-3812, R.C.M. 1947; Ap. p. Sec. 10, Ch. 246, L. 1957; amd. Sec. 4, Ch. 247, L. 1963; amd. Sec. 1, Ch. 189, L. 1965; amd. Sec. 3, Ch.`273, L. 1971; amd. Sec. 2, Ch. 349, L. 1973; Sec. 11-3810, R.C.M. 1947; (2)En. Sec. 13, Ch. 246, L. 1957; amd. Sec. 5, Ch. 247, L. 1963; Sec. 11-3813, R.C.M. 1947; R.C.M. 1947, 11-3810(part), 11-3812(part), 11-3813.

76-1-203. Term of members of county and city-county planning boards. The terms of the members who are officers of any governmental unit represented on the board shall be coextensive with their respective terms of office to which they have been elected or appointed; the terms of the other members shall be 2 years, except that the terms of the first members appointed shall be fixed by agreement and rule of the governing bodies represented on the board for 1 or 2 years in order that a minimum number of terms shall expire in any year.

History: En. Sec. 10, Ch. 246, L. 1957; amd. Sec. 4, Ch. 247, L. 1963; amd. Sec. 1, Ch. 189, L. 1965; amd. Sec. 3, Ch. 273, L. 1971; amd. Sec. 2, Ch. 349, L. 1973; R.C.M. 1947, 11-3810(3).

76-1-204. Vacancies on county and city-county planning boards. (1) Vacancies occurring on the board of official members and by death or resignation of citizen members shall be filled for the unexpired term by the governing bodies having appointed them.

(2) Vacancies occurring in citizen members on the county planning board at the end of a term shall be filled by the board of county commissioners.

(3) Vacancies occurring in citizen members on the city-county planning board at the end of a term shall be filled alternately by the mayor and the board of county commissioners represented on the board, commencing with the mayor.

(4) In the event more than one city is represented on a board, the representation and appointments to be made by the respective cities and counties shall be by agreement and rule of the board.

History: En. Sec. 11, Ch. 246, L. 1957; amd. Sec. 4, Ch. 273, L. 1971; R.C.M. 1947, 11-3811.

76-1-205 through 76-1-210 reserved.

76-1-211. Membership of county planning board. (1) County planning boards shall consist of not less than five members appointed by the board of county commissioners. At least one member of any county planning board existing on or formed after July 1, 1973, shall be a member of the governing board of a conservation district as provided for in chapter 15 or a state cooperative grazing district if officers of either reside in said county.

(2) In the event that any city or town subsequently becomes represented on the county planning board pursuant to 76-1-111, additional members of the planning board representing such cities or towns shall be appointed by the respective city councils.

History: En. Sec. 10, Ch. 246, L. 1957; amd. Sec. 4, Ch. 247, L. 1963; amd. Sec. 1, Ch. 189, L. 1965; amd. Sec. 3, Ch. 273, L. 1971; amd. Sec. 2, Ch. 349, L. 1973; R.C.M. 1947, 11-3810(2).

76-1-212. Citizen members of county planning board. (1) The citizen members of the county planning board shall be resident freeholders in the area over which the planning board has jurisdiction.

(2) Any citizen appointee may be removed from office by a majority vote of the governing body of the governmental unit represented by such appointee.

History: (1)En. Sec. 12, Ch. 246, L. 1957; amd. Sec. 2, Ch. 271, L. 1959; amd. Sec. 5, Ch. 273, L. 1971; Sec. 11-3812, R.C.M. 1947; (2)En. Sec. 13, Ch. 246, L. 1957; amd. Sec. 5, Ch. 247, L. 1963; Sec. 11-3813, R.C.M. 1947; R.C.M. 1947, 11-3812(part), 11-3813.

76-1-213 through 76-1-220 reserved.

76-1-221. Membership of city planning board. (1) A city planning board shall consist of not less than seven members to be appointed as follows:

(a) one member to be appointed by the city council from its membership;

(b) one member to be appointed by the city council, who may in the discretion of the city council be an employee or hold public office in the city or county in which the city is located;

(c) one member to be appointed by the mayor upon the designation by the county commissioners of the county in which the city is located;

(d) four citizen members to be appointed by the mayor, two of whom shall be resident freeholders within the urban area, if any, outside of the city limits over which the planning board has jurisdiction under this chapter and two of whom shall be resident freeholders within the city limits.

(2) The clerk of the city council shall certify members appointed by its body. The certificates shall be sent to and become a part of the records of the planning board. The mayor shall make similar certification for the appointment of citizen members.

History: (1)En. Sec. 4, Ch. 246, L. 1957; amd. Sec. 1, Ch. 271, L. 1959; Sec. 11-3804, R.C.M. 1947; (2)En. Sec. 7, Ch. 246, L. 1957; Sec. 11-3807, R.C.M. 1947; R.C.M. 1947, 11-3804(part), 11-3807.

76-1-222. City council member of city planning board. (1) As soon as the city council has enacted an ordinance creating a city planning board, the city council shall select a member of its body to serve on the planning board. The term of the appointed member shall be coextensive with the term of office to which he has been elected or appointed unless the council, on its first regular meeting of each year, appoints another to serve as its representative or unless his term is terminated as hereinafter provided.

(2) The city council shall fill any vacancy occurring in its respective membership on the planning board.

History: En. Sec. 6, Ch. 246, L. 1957; R.C.M. 1947, 11-3806.

76-1-223. County representative for city planning board. As soon as a city council has enacted an ordinance creating a city planning board, the board of county commissioners of the county wherein the city is located shall within 45 days designate a representative of the county to the mayor of the city for appointment to the city planning board. This representative may be a member of the board of county commissioners or an officeholder or employee of the county. In the event of the failure of the county to so designate such member, the mayor may appoint a person of his own choosing and at his sole discretion as a representative of the county.

History: En. Sec. 14, Ch. 246, L. 1957; R.C.M. 1947, 11-3814; amd. Sec. 2, Ch. 266, L. 1979.

76-1-224. Citizen members of city planning board. (1) The citizen members shall:

(a) be qualified by knowledge and experience in matters pertaining to the development of the city; and

(b) hold no other office in the city government.

(2) Any citizen appointee may be removed from office by a majority vote of the governing body of the city.

History: En. Secs. 8, 13, Ch. 246, L. 1957; amd. Secs. 3, 5, Ch. 247, L. 1963; R.C.M. 1947, 11-3808, 11-3813; amd. Sec. 3, Ch. 266, L. 1979.

Part 3

Organization and Administration

76-1-301. Planning board meetings. (1) The board shall fix the time for holding regular meetings, but it shall meet at least once in the months of January, April, July, and October.

(2) Special meetings of the planning board may be called by the president or by two members upon written request to the secretary. The secretary shall send to all members, at least 2 days in advance of a special meeting, a written notice fixing the time and place of the meeting. Written notice of a special meeting is not required if the time of the special meeting has been fixed in a regular meeting or if all members are present at the special meeting.

History: **En. Secs. 16, 17, Ch. 246, L. 1957; R.C.M. 1947, 11-3816, 11-3817.**

76-1-302. Planning board officers. At its first regular meeting in each year, the board shall elect from its members a president and vice-president. The vice-president shall have authority to act as president of the board during the absence or disability of the president.

History: **En. Sec. 21, Ch. 246, L. 1957; R.C.M. 1947, 11-3821.**

76-1-303. Offices. The city or county shall provide suitable offices for the holding of meetings and the preservation of plans, maps, documents, and accounts.

History: **En. Sec. 23, Ch. 246, L. 1957; R.C.M. 1947, 11-3823.**

76-1-304. Quorum — official action. (1) A majority of members shall constitute a quorum.

(2) No action of the planning board is official, however, unless authorized by a majority of members of the board at a regular or properly called special meeting.

History: **En. Sec. 18, Ch. 246, L. 1957; amd. Sec. 6, Ch. 247, L. 1963; R.C.M. 1947, 11-3818.**

76-1-305. Administration of board. To effectuate the purpose of this chapter, the board shall have the power and duty to:

(1) exercise general supervision of and make regulations for the administration of the affairs of the board;

(2) prescribe uniform rules pertaining to investigations and hearings;

(3) keep an accurate and complete record of all departmental proceedings, record and file all bonds and contracts, and assume responsibility for the custody and preservation of all papers and documents of the board;

(4) make recommendations and an annual report to any governing bodies represented on the board concerning the operation of the board and the status of planning within its jurisdiction;

(5) prepare, publish, and distribute reports, proposed ordinances and proposed resolutions, and other material relating to the activities authorized under this chapter.

History: **En. Sec. 24, Ch. 246, L. 1957; amd. Sec. 8, Ch. 247, L. 1963; R.C.M. 1947, 11-3824(part).**

76-1-306. Board secretary and employees — service contracts. (1) The board may appoint and prescribe the duties and fix the compensation of a secretary and such employees as are necessary for the discharge of the duties and responsibilities of the board.

(2) To effectuate the purpose of this chapter, the board shall have the power and duty to prescribe the qualifications of, appoint, remove, and fix the compensation of the employees of the board and delegate to employees authority to perform ministerial acts in all cases except where final action of the board is necessary.

(3) The board may make contracts for special or temporary services and any professional services.

History: (1), (3)En. Sec. 22, Ch. 246, L. 1957; Sec. 11-3822, R.C.M. 1947; (2)En. Sec. 24, Ch. 246, L. 1957; amd. Sec. 8, Ch. 247, L. 1963; Sec. 11-3824, R.C.M. 1947; R.C.M. 1947, 11-3822, 11-3824(part).

76-1-307. Compensation and expenses of board members and employees. (1) The members of planning boards shall receive no salary for serving on the planning board but may be reimbursed from local funds for transportation and actual expenses up to but not exceeding state transportation reimbursements and allowable expenses incurred in attending planning board meetings.

(2) When the planning board determines that it is necessary for members or employees to attend a regional or national conference or interview in another city, county, or state dealing with planning or related problems, the planning board may pay the actual expenses of the attending members or employees provided the amount has been made available in the board's appropriation.

History: (1)En. Sec. 19, Ch. 246, L. 1957; amd. Sec. 1, Ch. 291, L. 1974; Sec. 11-3819, R.C.M. 1947; (2)En. Sec. 20, Ch. 246, L. 1957; amd. Sec. 7, Ch. 247, L. 1963; Sec. 11-3820, R.C.M. 1947; R.C.M. 1947, 11-3819, 11-3820.

Part 4

Financial Administration

76-1-401. Fiscal administration. (1) To effectuate the purpose of this chapter, the board shall have the power and duty to:

(a) supervise the fiscal affairs and responsibilities of the board;

(b) prepare and submit to the governing bodies represented on the board an annual budget in the same manner as other departments of the city and county governments and shall be limited in all expenditures to the provisions made therefor by the governing bodies represented upon the board.

(2) The planning board shall have authority to expend, under regular city or county procedure as provided by law, all sums appropriated to it for purposes and activities authorized by this chapter.

History: (1)En. Sec. 24, Ch. 246, L. 1957; amd. Sec. 8, Ch. 247, L. 1963; Sec. 11-3824, R.C.M. 1947; (2)En. Sec. 26, Ch. 246, L. 1957; Sec. 11-3826, R.C.M. 1947; R.C.M. 1947, 11-3824(part), 11-3826.

76-1-402. Funding of board operation. (1) After a city council has by ordinance, a board of county commissioners has by ordinance and resolution, or a city council and board of county commissioners have by ordinance and resolution created a planning board, the governing bodies represented upon such board may appropriate funds to carry out the duties of the planning board.

(2) When a planning board has been created by agreement of more than one governmental unit, the governing bodies of the governmental units which have created the board shall agree upon the proportion of expenditures to be borne by each such unit and may budget and appropriate the funds necessary for the respective shares thus agreed upon.

History: **En. Sec. 25, Ch. 246, L. 1957; amd. Sec. 9, Ch. 247, L. 1963; amd. Sec. 7, Ch. 273, L. 1971; R.C.M. 1947, 11-3825(1), (2).**

76-1-403. Tax levy by county for certain county planning districts authorized. When a county planning board has been established, the board of county commissioners may create a planning district which shall include that property which lies outside the limits of the jurisdictional area as established pursuant to 76-1-504 through 76-1-507 or as modified pursuant to 76-1-501 through 76-1-503 in counties where a city-county planning board has been established as well as that property which lies outside the limits of any incorporated cities and towns. The board of county commissioners may levy on all property located within such planning district a tax not to exceed the maximum levy authorized by 76-1-405 for planning board purposes, under procedures set forth in Title 7, chapter 6, part 23.

History: **En. Sec. 25, Ch. 246, L. 1957; amd. Sec. 9, Ch. 247, L. 1963; amd. Sec. 7, Ch. 273, L. 1971; R.C.M. 1947, 11-3825(5); amd. Sec. 4, Ch. 266, L. 1979.**

76-1-404. Tax levy by county for city-county planning board authorized. When a city-county planning board has been established, the board of county commissioners may create a planning district which shall include that property within the jurisdictional areas as established pursuant to 76-1-504 through 76-1-507 which lies outside the limits of any incorporated cities and towns. The board of county commissioners may levy on all property located within such planning district a tax for planning board purposes, under procedures set forth in Title 7, chapter 6, part 23, provided such tax shall not exceed the maximum levy authorized in 76-1-405.

History: **En. Sec. 25, Ch. 246, L. 1957; amd. Sec. 9, Ch. 247, L. 1963; amd. Sec. 7, Ch. 273, L. 1971; R.C.M. 1947, 11-3825(4).**

76-1-405. Maximum county mill levy — authorization for levy. The tax levy for planning board purposes shall be limited as follows:

(1) A county of the first class, as defined in 7-1-2111, may levy a tax not to exceed 2 mills.

(2) A county of the second class may levy a tax not to exceed 3 mills.

(3) A county of the third class may levy a tax not to exceed 4 mills.

(4) A county of the fourth class may levy a tax not to exceed 5 mills.

(5) Counties of the fifth, sixth, and seventh classes may levy a tax not to exceed 6 mills.

History: **En. Sec. 25, Ch. 246, L. 1957; amd. Sec. 9, Ch. 247, L. 1963; amd. Sec. 7, Ch. 273, L. 1971; R.C.M. 1947, 11-3825(part).**

76-1-406. Tax levy by municipalities authorized. The governing body of any city or town represented upon a planning board may levy a tax upon the property located within such city or town for planning board purposes, under procedures set forth in Title 7, chapter 6, part 42, provided such tax shall not exceed the maximum levy authorized in 76-1-407.

History: **En. Sec. 25, Ch. 246, L. 1957; amd. Sec. 9, Ch. 247, L. 1963; amd. Sec. 7, Ch. 273, L. 1971; R.C.M. 1947, 11-3825(3); amd. Sec. 5, Ch. 266, L. 1979.**

76-1-407. Maximum city mill levy. The tax levy for planning board purposes shall be limited as follows:

(1) A city of the first class, as defined in 7-1-4111, may levy a tax not to exceed 2 mills.

(2) A city of the second class may levy a tax not to exceed 4 mills.

(3) A city of the third class may levy a tax not to exceed 6 mills.

(4) A town may levy a tax not to exceed 6 mills.

History: En. Sec. 25, Ch. 246, L. 1957; amd. Sec. 9, Ch. 247, L. 1963; amd. Sec. 7, Ch. 273, L. 1971; R.C.M. 1947, 11-3825(part).

76-1-408. Acceptance and administration of gifts and donations. (1) A city, county, or city-county planning board organized pursuant to the provisions of this chapter is hereby empowered and given the right to:

(a) accept, receive, take, hold, own, and possess any gift, donation, grant, devise, or bequest or any property (real, personal, or mixed) or any improved or unimproved park or playground; and

(b) utilize, hold, or dispose of the same for planning purposes not inconsistent with the provisions of this chapter.

(2) Any money so accepted shall be deposited with the city or county in a special nonreverting planning board fund to be available for expenditures by the planning board for the purpose designated by the donor. The disbursing officer of a city or county shall draw warrants against such special nonreverting fund only upon vouchers signed by the president and secretary of the planning board.

History: En. Sec. 27, Ch. 246, L. 1957; amd. Sec. 1, Ch. 133, L. 1965; R.C.M. 1947, 11-3827(part).

76-1-409. Acceptance and administration of government funds and services. Upon approval of the governing bodies represented on the board, a planning board may accept, receive, and expend funds, grants, and services from the federal government or its agencies and instrumentalities, from state or local governments or their agencies and instrumentalities, or from civic sources; may contract with respect thereto; and may provide such information and reports as may be necessary to secure such financial aid.

History: En. Sec. 27, Ch. 246, L. 1957; amd. Sec. 1, Ch. 133, L. 1965; R.C.M. 1947, 11-3827(part); amd. Sec. 6, Ch. 266, L. 1979.

Part 5

Jurisdictional Area

76-1-501. Jurisdictional area of county planning board. The board of county commissioners shall by resolution establish the jurisdictional area of the county planning board. The jurisdictional area shall include the area which is both outside the incorporated limits of any city in the county as well as outside the jurisdictional area of an existing city-county planning board established pursuant to 76-1-504 through 76-1-507. Should any city or town become represented on the county planning board pursuant to 76-1-111, the jurisdictional area of the county planning board shall be extended to include that city or town.

History: En. 11-3830.2 by Sec. 8, Ch. 273, L. 1971; R.C.M. 1947, 11-3830.2(1).

76-1-502. Filing of map of jurisdictional area of county planning board — revision of boundaries. The planning board, after the approval of the jurisdictional area by the board of county commissioners, shall file in the office of the clerk and recorder a map showing the boundaries of the jurisdictional area. The boundaries may be revised from time to time by resolution of the board of county commissioners. Such revised boundaries shall be shown upon a map which shall be filed as provided in this section. The area included in such map shall constitute the area over which the planning board shall have advisory jurisdiction.

History: En. 11-3830.2 by Sec. 8, Ch. 273, L. 1971; R.C.M. 1947, 11-3830.2(2).

76-1-503. Resolution of conflicts involving jurisdictional area of county planning boards. (1) In case an unincorporated area is within the potential jurisdiction of more than one planning board, then the boundary between the conflicting areas shall be determined by agreement between the planning boards involved with the approval of their respective governing bodies. Any map showing the boundary line so agreed upon and approved shall be filed as provided in 76-1-502 and thereafter shall fix the limit of territorial jurisdiction with respect to planning boards.

(2) In case the jurisdictional area of a city-county planning board, which is established subsequent to the establishment of a county planning board, is potentially within the jurisdiction of the county planning board, then the property outside any incorporated city between the conflicting areas shall be determined by agreement between the planning boards involved with the approval of the respective governing bodies, and a map showing the boundary lines so agreed upon shall be filed as provided in 76-1-502 and thereafter shall fix the limits of the territorial jurisdiction of the respective planning boards.

History: En. 11-3830.2 by Sec. 8, Ch. 273, L. 1971; R.C.M. 1947, 11-3830.2(3), (4).

76-1-504. Jurisdictional area of city-county planning board. The governing bodies represented on a city-county planning board shall by separate resolution establish the jurisdictional area of the planning board. The jurisdictional area shall include the area within the incorporated limits of the city and such contiguous unincorporated area outside the city as, in the judgment of the respective governing bodies, bears reasonable relation to the development of the area involved.

History: En. Sec. 30, Ch. 246, L. 1957; amd. Sec. 3, Ch. 271, L. 1959; amd. Sec. 11, Ch. 247, L. 1963; amd. Sec. 1, Ch. 136, L. 1969; R.C.M. 1947, 11-3830(part).

76-1-505. Extension of boundaries of city-county planning board jurisdictional area. (1) The boundaries of the jurisdictional area can be extended further than 4 ½ miles from the limits of the cities only upon petition signed by 5% or more of the resident freeholders living in excess of 4 ½ miles and not more than 12 miles from the limits of the cities and within the area desiring to be included within said jurisdictional limits and upon presentation of said petition to the board of county commissioners.

(2) Thereafter, the board of county commissioners must by resolution set the proposed boundaries of said area and give notice of their intent to add said area to the jurisdictional limits theretofore created and of receipt of said

petition by publication of notice of time and place of hearing on said petition and resolution. Said notice is to be published in a newspaper published in the county not less than 10 or more than 20 days prior to the date of said hearing. Thereafter, the boundaries of said area can only be set upon good cause being shown for the establishment of said extended jurisdictional area and the boundaries thereof, provided that such resolution shall not be adopted by the board of county commissioners if disapproved in writing by a majority of the freeholders of the territory proposed to be embraced. The jurisdictional area shall not extend more than 12 miles beyond the limits of any city within the jurisdictional area.

History: **En. Sec. 30, Ch. 246, L. 1957; amd. Sec. 3, Ch. 271, L. 1959; amd. Sec. 11, Ch. 247, L. 1963; amd. Sec. 1, Ch. 136, L. 1969; R.C.M. 1947, 11-3830(part).**

76-1-506. Filing of map of jurisdictional area of city-county planning board — revision of boundaries. The planning board, after approval of the jurisdictional area by the governing bodies, shall file in the office of the clerk and recorder a map showing the boundaries of the jurisdictional area. The boundaries may be revised from time to time by resolutions of the governing bodies. Such revised boundaries shall be shown upon a map which shall be filed as provided in this section. The area included in such map shall constitute the area over which the planning board shall have advisory jurisdiction.

History: **En. Sec. 30, Ch. 246, L. 1957; amd. Sec. 3, Ch. 271, L. 1959; amd. Sec. 11, Ch. 247, L. 1963; amd. Sec. 1, Ch. 136, L. 1969; R.C.M. 1947, 11-3830(2).**

76-1-507. Resolution of conflicts over jurisdictional areas of several city-county planning boards. In case an unincorporated area is within the potential jurisdiction of more than one planning board, then the boundary between the conflicting areas shall be determined by agreement between the planning boards involved with the approval of their respective governing bodies. A map showing the boundary lines so agreed upon and approved shall be filed as provided in 76-1-506 and thereafter shall fix the limit of territorial jurisdiction of the respective planning boards.

History: **En. Sec. 30, Ch. 246, L. 1957; amd. Sec. 3, Ch. 271, L. 1959; amd. Sec. 11, Ch. 247, L. 1963; amd. Sec. 1, Ch. 136, L. 1969; R.C.M. 1947, 11-3830(3).**

76-1-508. Planning projects outside city-county planning board jurisdictional area — broad construction. (1) Any city-county planning board organized pursuant to the provisions of this chapter is hereby empowered, if requested by the board of county commissioners, to conduct specific planning projects within the county and outside of the jurisdictional area of said city-county planning board as defined in 76-1-504 through 76-1-507.

(2) Such authority to conduct specific planning projects outside of the jurisdictional area of the city-county planning board upon request of the board of county commissioners shall be broadly construed so as to enable the county to qualify under the provisions of and regulations governing any planning assistance program administered by any agency of the United States of America or the state of Montana.

History: **En. Sec. 1, Ch. 190, L. 1965; R.C.M. 1947, 11-3830.1.**

Part 6

Master Plan

76-1-601. Master plan — contents. The planning board shall prepare and propose a master plan for the jurisdictional area. The plan may propose ordinances or resolutions for possible adoption by the appropriate governing body. The plan may include:

(1) careful and comprehensive surveys and studies of existing conditions and the probable future growth of the city and its environs or of the county;

(2) maps, plats, charts, and descriptive material presenting basic information, locations, extent, and character of any of the following:

(a) history, population, and physical site conditions;

(b) land use, including the height, area, bulk, location, and use of private and public structures and premises;

(c) population densities;

(d) community centers and neighborhood units;

(e) blighted and slum areas;

(f) streets and highways, including bridges, viaducts, subways, parkways, alleys, and other public ways and places;

(g) sewers, sanitation, and drainage, including handling, treatment, and disposal of excess drainage waters, sewage, garbage, refuse, and other wastes;

(h) flood control and prevention;

(i) public and private utilities, including water, light, heat, communication, and other services;

(j) transportation, including rail, bus, truck, air, and water transport and their terminal facilities;

(k) local mass transit, including motor and trolley bus; street, elevated, or underground railways; and taxicabs;

(l) parks and recreation, including parks, playgrounds, reservations, forests, wildlife refuges, and other public grounds, spaces, and facilities of a recreational nature;

(m) public buildings and institutions, including governmental administration and service buildings, hospitals, infirmaries, clinics, penal and correctional institutions, and other civic and social service buildings;

(n) education, including location and extent of schools, colleges, and universities;

(o) land utilization, including areas for manufacturing and industrial uses, concentration of wholesale business, retail business, and other commercial uses, residential uses, and areas for mixed uses;

(p) conservation of water, soil, agricultural, and mineral resources;

(q) any other factors which are a part of the physical, economic, or social situation within the city or county;

(3) reports, maps, charts, and recommendations setting forth plans for the development, redevelopment, improvement, extension, and revision of the subjects and physical situations of the city or county set out in subsection (2) so as to substantially accomplish the object of this chapter as set out in 76-1-101 and 76-1-102;

(4) a long-range development program of public works' projects, based on the recommended plans of the planning board, for the purpose of eliminating

unplanned, unsightly, untimely, and extravagant projects and with a view to stabilizing industry and employment and the keeping of such program up-to-date for all separate taxing units within the city or county, respectively, for the purpose of assuring efficient and economic use of public funds;

(5) recommendations setting forth the development, improvement, and extension of areas, if any, to be set aside for use as trailer courts and sites for mobile homes.

History: Ap. p. Sec. 31, Ch. 246, L. 1957; amd. Sec. 12, Ch. 247, L. 1963; amd. Sec. 1, Ch. 156, L. 1973; Sec. 11-3831, R.C.M. 1947; Ap. p. Sec. 3, Ch. 246, L. 1957; amd. Sec. 2, Ch. 247, L. 1963; amd. Sec. 1, Ch. 349, L. 1973; Sec. 11-3803, R.C.M. 1947; R.C.M. 1947, 11-3803(part), 11-3831.

76-1-602. Public hearing on proposed master plan. (1) Prior to the submission of the proposed master plan to the governing bodies, the board shall give notice and hold a public hearing on the plan.

(2) At least 10 days prior to the date set for hearing, the board shall publish in a newspaper of general circulation in the jurisdictional area a notice of the time and place of the hearing.

History: En. Sec. 33, Ch. 246, L. 1957; amd. Sec. 13, Ch. 247, L. 1963; R.C.M. 1947, 11-3833.

76-1-603. Adoption of master plan by planning board. After consideration of the recommendations and suggestions elicited at the public hearing, the planning board shall by resolution recommend the proposed master plan and any proposed ordinances and resolutions for its implementation to the governing bodies of the governmental units represented on the board.

History: En. Sec. 34, Ch. 246, L. 1957; amd. Sec. 14, Ch. 247, L. 1963; R.C.M. 1947, 11-3834.

76-1-604. Adoption, revision, or rejection of master plan. (1) The governing bodies shall adopt a resolution of intention to adopt, revise, or reject such proposed plan or any of its parts.

(2) If the governing bodies adopt a resolution of intention to adopt the proposed plan or any of its parts, they may, in their discretion, submit to the qualified electors of the jurisdictional area included within the proposed plan at the next primary or general election or at a special election the referendum question of whether or not the plan should be adopted. The provisions of Title 7, chapter 5, part 1, except as in this section otherwise provided, shall apply to such referendum election.

(3) The governing bodies may adopt, revise, or repeal a master plan under this section.

(4) The qualified electors of the jurisdictional area included within the master plan may by initiative or referendum, as provided in 7-5-131 through 7-5-137, adopt, revise, or repeal a master plan under this section.

History: En. Sec. 40, Ch. 246, L. 1957; amd. Sec. 15, Ch. 247, L. 1963; R.C.M. 1947, 11-3840(part); amd. Sec. 1, Ch. 541, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "The governing bodies shall adopt a resolution of intention to adopt" for "The governing bodies shall adopt" at the beginning of (1); and added subsections (2) through (4).

76-1-605. Use of adopted master plan. After adoption of the master plan, the city council, the board of county commissioners, or other governing body within the territorial jurisdiction of the board shall be guided by and give consideration to the general policy and pattern of development set out in the master plan in the:

(1) authorization, construction, alteration, or abandonment of public ways, public places, public structures, or public utilities;

(2) authorization, acceptance, or construction of water mains, sewers, connections, facilities, or utilities;

(3) adoption of subdivision controls;

(4) adoption of zoning ordinances or resolutions.

History: En. Sec. 40, Ch. 246, L. 1957; amd. Sec. 15, Ch. 247, L. 1963; R.C.M. 1947, 11-3840(part).

76-1-606. Effect of master plan on subdivisions and plats. (1) Where a master plan has been approved, the city council may by ordinance or the board of county commissioners may by resolution require subdivision plats to conform to the provisions of the master plan. Certified copies of such ordinance shall be filed with the city or town clerk and with the county clerk and recorder of the county.

(2) Thereafter:

(a) a plat involving lands within the corporate limits of the city and covered by said master plan shall not be filed without first presenting it to the planning board, which shall make a report to the city council advising as to compliance or noncompliance of the plat with the master plan. The city council shall have the final authority to approve the filing of such plat.

(b) a plat involving lands outside the corporate limits of the city and covered by said master plan shall not be filed without first presenting it to the planning board which shall make a report to the board of county commissioners advising as to compliance or noncompliance of the plat with the master plan. The board of county commissioners shall have the final authority to approve the filing of such plat.

(3) Nothing herein contained shall be interpreted to limit the present powers of the city or county governments but shall be an additional requirement before any plat may be filed of record or entitled to be recorded.

History: En. Sec. 42, Ch. 246, L. 1957; amd. Sec. 4, Ch. 271, L. 1959; amd. Sec. 16, Ch. 247, L. 1963; amd. Sec. 9, Ch. 273, L. 1971; R.C.M. 1947, 11-3842.

CHAPTER 2

PLANNING AND ZONING

Part 1 — County Planning and Zoning Commission

Section

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76-2-321. Board of adjustment.
76-2-322. Membership and term of board members — vacancies.
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Part 4 — Application to Governmental Agencies

76-2-401. Definitions.
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Part 1

County Planning and Zoning Commission

76-2-101. Planning and zoning commission and district. (1) Whenever the public interest or convenience may require and upon petition of 60% of the freeholders affected thereby, the board of county commissioners is hereby authorized and empowered to order and create a planning and zoning district and to appoint a commission consisting of five members.

(2) No such planning or zoning district may be created in an area which has been zoned by an incorporated city pursuant to 76-2-310 and 76-2-311.

(3) For the purposes of this part, the word "district" shall mean any area that consists of not less than 40 acres.

History: (1), (2)En. Sec. 1, Ch. 154, L. 1953; amd. Sec. 16, Ch. 273, L. 1971; Sec. 16-4101, R.C.M. 1947; (3)En. Sec. 7, Ch. 154, L. 1953; amd. Sec. 1, Ch. 229, L. 1955; Sec. 16-4107, R.C.M. 1947; R.C.M. 1947, 16-4101(part), 16-4107.

76-2-102. Organization and operation of commission. (1) The commission is to consist of the three county commissioners, the county surveyor, and the county assessor. Members of the commission shall serve without compensation other than reimbursement for duly authorized expenses and shall be residents of the county in which they serve.

(2) The commission hereby is authorized to appoint necessary employees and fix their compensation with the approval of the board of county commissioners, to select a chairman to serve for 1 year, to appoint a secretary who shall keep permanent and complete records of its proceedings, and to adopt rules governing the transaction of its business.

(3) The finances necessary for the transaction of the planning and zoning commission's business and to pay the expenses of the employees and justified expenses of the members of the board shall be paid from a levy of not to exceed 1 mill on the taxable valuation of the real property within such district.

History: En. Sec. 1, Ch. 154, L. 1953; amd. Sec. 16, Ch. 273, L. 1971; R.C.M. 1947, 16-4101(part).

76-2-103. Powers of commission and employees. (1) In general, the planning and zoning commission shall have such powers as may be appropriate to enable it to fulfill its functions and duties to promote county planning and to carry out the purposes of this part.

(2) The planning and zoning commission and any of its members, officers, and employees in the performance of their functions may enter upon any land and make examinations and surveys and place and maintain the necessary monuments and markers thereon.

History: En. Sec. 4, Ch. 154, L. 1953; R.C.M. 1947, 16-4104(part).

76-2-104. Development pattern. (1) For the purpose of furthering the health, safety, and general welfare of the people of the county, the county planning and zoning commission hereby is empowered and it shall be its duty to make and adopt a development pattern for the physical and economic development of the planning and zoning district.

(2) Such development pattern, with the accompanying maps, plats, charts, and descriptive matter, shall show the planning and zoning commission's recommendations for the development of the districts, within some of

which it shall be lawful and within others of which it shall be unlawful to erect, construct, alter, or maintain certain buildings or to carry on certain trades, industries, or callings or within which the height and bulk of future buildings and the area of the yards, courts, and other open spaces and the future uses of the land or buildings shall be limited and future building setback lines shall be established.

History: **En. Sec. 2, Ch. 154, L. 1953; R.C.M. 1947, 16-4102(part).**

76-2-105. Continuation of prior nonconforming uses. Existing nonconforming uses may be continued although not in conformity with such zoning regulations.

History: **En. Sec. 2, Ch. 154, L. 1953; R.C.M. 1947, 16-4102(part).**

76-2-106. Adoption of development district. (1) Adoption by the planning and zoning commission of the development district or any change therein may be in whole or in part but must be by the affirmative vote of the majority of the whole commission, provided, however, that prior to any such adoption, a public hearing shall have been held not less than 15 days after notice thereof shall have been posted in at least three public places within the area affected.

(2) The resolution adopting the district or any part or parts covering one or more of the functional elements which may be included within the district shall refer expressly to the maps, charts, and descriptive matters forming the pattern or part thereof. The board of county commissioners shall have the power to authorize such variance from the recommendations of the planning commission as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the decision of the planning and zoning commission will result in unnecessary hardship.

History: **En. Sec. 3, Ch. 154, L. 1953; R.C.M. 1947, 16-4103.**

76-2-107. Preparation of resolutions and other materials. The planning and zoning commission may, for the benefit and welfare of the county, prepare and submit to the board of county commissioners drafts of resolutions for the purpose of carrying out the development districts or any part thereof previously adopted by the commission, including zoning and land use regulations, the making of official maps, and the preservation of the integrity thereof and including procedure for appeals from decisions made under the authority of such regulations and regulations for the conservation of the natural resources of the county. The board of county commissioners is hereby authorized to adopt such resolutions.

History: **En. Sec. 5, Ch. 154, L. 1953; R.C.M. 1947, 16-4105(part).**

76-2-108. Permits authorized. The planning and zoning commission hereby is empowered to authorize and provide for the issuance of permits as a prerequisite to construction, alteration, or enlargement of any building or structure otherwise subject to the provisions of this part and may establish and collect reasonable fees therefor. The fees so collected are to go to the general fund of the county.

History: **En. Sec. 5, Ch. 154, L. 1953; R.C.M. 1947, 16-4105(part).**

76-2-109. Effect on natural resources. No planning district or recommendations adopted under this part shall regulate lands used for grazing, horticulture, agriculture, or the growing of timber.

History: **En. Sec. 2, Ch. 154, L. 1953; R.C.M. 1947, 16-4102(part).**

76-2-110. Appeal procedure. Any person aggrieved by any decision of the commission or the board of county commissioners may, within 30 days after such decision or order, appeal to the district court in the county in which the property involved is located.

History: **En. Sec. 5, Ch. 154, L. 1953; R.C.M. 1947, 16-4105(part).**

76-2-111. Cooperation by public agencies with commission. All public officials, departments, and agencies having information, maps, and data deemed by the commission pertinent to county planning are hereby empowered and directed to make such information available for the use of the county planning and zoning commission.

History: **En. Sec. 4, Ch. 154, L. 1953; R.C.M. 1947, 16-4104(part).**

76-2-112. Effect on powers of incorporated communities to plan adjacent areas. The authority heretofore granted by law to the incorporated communities to approve subdivision plats within the unincorporated area adjacent to their corporate limits is not abrogated by this part except and until the board of county commissioners having jurisdiction over such adjacent area establishes a planning commission and adopts initial regulations for subdivision control within adjacent areas or districts. Authority of the adjacent municipality shall be suspended on the effective date of the county regulation with respect to all areas governed by county subdivision regulations.

History: **En. Sec. 6, Ch. 154, L. 1953; R.C.M. 1947, 16-4106.**

Part 2

County Zoning

76-2-201. County zoning authorized. For the purpose of promoting the health, safety, morals, and general welfare of the people in cities and towns and counties whose governing bodies have adopted a comprehensive development plan for jurisdictional areas pursuant to chapter 1, the boards of county commissioners in such counties are authorized to adopt zoning regulations for all or parts of such jurisdictional areas in accordance with the provisions of this part.

History: **En. Sec. 1, Ch. 246, L. 1963; R.C.M. 1947, 16-4701.**

76-2-202. Establishment of zoning districts — regulations. (1) Within the unincorporated portions of a jurisdictional area which has been established under provisions of 76-1-501 through 76-1-503 or 76-1-504 through 76-1-507, the board of county commissioners may by resolution establish zoning districts and zoning regulations for all or part of the jurisdictional area.

(2) Within some such zoning districts it shall be lawful and within others it shall be unlawful to erect, construct, alter, or maintain certain buildings or to carry on certain trades, industries, or callings.

(3) Within each district the height and bulk of future buildings and the area of the yards, courts, and other open spaces and the future uses of the land or buildings shall be limited and future building setback lines shall be established.

(4) All such regulations shall be uniform for each class or kind of buildings throughout a district, but the regulations in one district may differ from those in other districts.

History: **En. Sec. 3, Ch. 246, L. 1963; amd. Sec. 18, Ch. 273, L. 1971; R.C.M. 1947, 16-4703.**

76-2-203. Criteria and guidelines for zoning regulations. The zoning regulations shall be made in accordance with a comprehensive development plan and shall be designed to lessen congestion in the streets; to secure safety from fire, panic, and other dangers; to promote health and general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements. Such zoning regulations shall be made with reasonable consideration, among other things, to the character of the district and its peculiar suitability for particular uses and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such jurisdictional area. The zoning regulations shall, as nearly as possible, be made compatible with the zoning ordinances of the municipality within the jurisdictional area.

History: **En. Sec. 4, Ch. 246, L. 1963; R.C.M. 1947, 16-4704.**

76-2-204. Role of planning boards. (1) The board of county commissioners shall require the county planning board and the city-county planning board to recommend boundaries and appropriate regulations for the various zoning districts. The county planning board and the city-county planning board shall make written reports of their recommendations to the board of county commissioners, but such recommendations shall be advisory only.

(2) This section shall apply to either the county planning board or the city-county planning board where only one of these planning boards has been established.

History: **En. Sec. 2, Ch. 246, L. 1963; amd. Sec. 17, Ch. 273, L. 1971; R.C.M. 1947, 16-4702.**

76-2-205. Procedure for adoption of regulations and boundaries. The board of county commissioners shall observe the following procedures in the establishment or revision of boundaries for zoning districts and in the adoption or amendment of zoning regulations:

(1) Notice of a public hearing on the proposed zoning district boundaries and of regulations for the zoning district shall be published once a week for 2 weeks in a newspaper of general circulation within the county. The notice shall state:

(a) the boundaries of the proposed district;

(b) the general character of the proposed zoning regulations;

(c) the time and place of the public hearing;

(d) that the proposed zoning regulations are on file for public inspection at the office of the county clerk and recorder.

(2) At the public hearing, the board of county commissioners shall give the public an opportunity to be heard regarding the proposed zoning district and regulations.

(3) After the public hearing, the board of county commissioners shall review the proposals of the planning board and shall make such revisions or amendments as it may deem proper.

(4) The board of county commissioners may pass a resolution of intention to create a zoning district and to adopt zoning regulations for the district.

(5) The board of county commissioners shall publish notice of passage of the resolution of intention once a week for 2 weeks in a newspaper of general circulation within the county. The notice shall state:

(a) the boundaries of the proposed district;

(b) the general character of the proposed zoning regulations;

(c) that the proposed zoning regulations are on file for public inspection at the office of the county clerk and recorder;

(d) that for 30 days after first publication of this notice, the board of county commissioners will receive written protests to the creation of the zoning district or to the zoning regulations from persons owning real property within the district whose names appear on the last completed assessment roll of the county.

(6) Within 30 days after the expiration of the protest period, the board of county commissioners may in its discretion adopt the resolution creating the zoning district and/or establishing the zoning regulations for the district; but if 40% of the freeholders within such district whose names appear on the last completed assessment roll shall have protested the establishment of the district or adoption of the regulations, the board of county commissioners shall not adopt the resolution and no further zoning resolution shall be proposed for the district for a period of 1 year.

History: En. Sec. 5, Ch. 246, L. 1963; amd. Sec. 19, Ch. 273, L. 1971; R.C.M. 1947, 16-4705.

76-2-206. Interim zoning map or regulation. (1) If a county is conducting or in good faith intends to conduct studies within a reasonable time or has held or is holding a hearing for the purpose of considering a master plan or zoning regulations or an amendment, extension, or addition to either pursuant to this part, the board of county commissioners in order to promote the public health, safety, morals, and general welfare may adopt as an emergency measure a temporary interim zoning map or temporary interim zoning regulation, the purpose of which shall be to classify and regulate uses and related matters as constitutes the emergency.

(2) Such interim resolution shall be limited to 1 year from the date it becomes effective. The board of county commissioners may extend such interim resolution for 1 year, but not more than one such extension may be made.

History: En. 16-4711 by Sec. 20, Ch. 273, L. 1971; R.C.M. 1947, 16-4711.

76-2-207. Permits authorized. The board of county commissioners may provide for the issuance of location or conformance permits and may collect a fee for each such permit. The proceeds of such fees shall be deposited in the general fund of the county.

History: En. Sec. 8, Ch. 246, L. 1963; R.C.M. 1947, 16-4708(part).

76-2-208. Continuation of nonconforming uses. Any lawful use which is made of land or buildings at the time any zoning resolution is adopted by the board of county commissioners may be continued although such use does not conform to the provisions of such resolution.

History: **En. Sec. 9, Ch. 246, L. 1963; R.C.M. 1947, 16-4709.**

76-2-209. Effect on natural resources. No resolution or rule adopted pursuant to the provisions of this part, except 76-2-206, shall prevent the complete use, development, or recovery of any mineral, forest, or agricultural resources by the owner thereof.

History: **En. Sec. 10, Ch. 246, L. 1963; R.C.M. 1947, 16-4710.**

76-2-210. Enforcement of zoning provisions. (1) In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained or any building, structure, or land is used in violation of this part or of any resolution made under authority conferred hereby, the proper authorities of the county, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use; to restrain, correct, or abate such violation; to prevent the occupancy of such building, structure, or land; or to prevent any illegal act, conduct, business, or use in or about such premises.

(2) The board of county commissioners may appoint enforcing officers to supervise and enforce the provisions of the zoning resolutions.

History: **En. Secs. 7, 8, Ch. 246, L. 1963; R.C.M. 1947, 16-4707(part), 16-4708(part).**

76-2-211. Violations and penalties. A violation of this part or any resolution adopted pursuant thereto is a misdemeanor and shall be punishable by a fine not exceeding $500 or imprisonment in the county jail not exceeding 6 months or both.

History: **En. Sec. 7, Ch. 246, L. 1963; R.C.M. 1947, 16-4707(part); amd. Sec. 7, Ch. 266, L. 1979.**

76-2-212 through 76-2-219 reserved.

76-2-220. Zoning commission — appointment — duties. (1) For the purpose of providing an optional method of amending any zoning regulations or zoning classification, the county commissioners may appoint a zoning commission to recommend amendments to the zoning regulations and classifications. Such a zoning commission must be composed of at least five citizen members appointed at large from the zoning district. The county commissioners may adopt bylaws for the zoning commission pertaining to the qualifications of the members and such other matters as the commissioners consider necessary.

(2) If a commission is appointed, it shall hold a public hearing to receive relevant testimony. The hearing, which may be held jointly with the hearing by the county commissioners, must be upon at least 15 days' notice of the time and place of the hearing and must be published in the contracted newspaper provided for in 7-5-2411 or a newspaper of general circulation in the

county. Recommendations of the zoning commission must be submitted to the county commissioners.

History: En. Sec. 1, Ch. 462, L. 1981.

Compiler's Comments

1981 Title: The title to HB 575 (Ch. 462, L. 1981) read: "An act to authorize the county commissioners to create a citizen advisory committee to advise the county commissioners on proposed amendments to zoning regulations."

Codification Instruction: Section 2, Ch. 462, L. 1981, provided: "Section 1 is intended to be codified as an integral part of Title 76, chapter 2, part 2, and the provisions of Title 76, chapter 2, apply to section 1."

76-2-221. Board of adjustment. (1) The board of county commissioners shall provide for the appointment of a board of adjustment and in the regulations and restrictions adopted pursuant to the authority of this part shall provide that the board of adjustment may, in appropriate cases and subject to appropriate conditions and safeguards, make special exceptions to the terms of the zoning resolution in harmony with its general purposes and intent and in accordance with the general or specific rules of this part.

(2) The board of adjustment shall adopt rules in accordance with the provisions of any resolution adopted pursuant to this part. Meetings of the board of adjustment shall be held at the call of the chairman and at such times as the board may determine. Such chairman or in his absence the acting chairman may administer oaths and compel the attendance of witnesses.

History: En. Sec. 6, Ch. 246, L. 1963; R.C.M. 1947, 16-4706(part).

76-2-222. Membership and term of board members — vacancies. (1) The board of adjustment shall consist of five members, each to be appointed for a term of 2 years and removable for cause by the board of county commissioners upon written charges and after public hearing. The board of county commissioners may designate the same persons to act as members of the board of adjustment for unincorporated portions of the jurisdictional area as may be appointed by the municipality within the jurisdictional area under provisions of 76-2-321 through 76-2-328.

(2) Vacancies shall be filled for the unexpired term of any member whose term becomes vacant.

History: En. Sec. 6, Ch. 246, L. 1963; R.C.M. 1947, 16-4706(1).

76-2-223. Powers of board of adjustment. (1) The board of adjustment shall have the following powers:

(a) to hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this part or of any resolution adopted pursuant thereto;

(b) to hear and decide special exceptions to the terms of the zoning resolution upon which said board is required to pass under such resolution;

(c) to authorize upon appeal in specific cases such variance from the terms of the resolution as will not be contrary to the public interest and where, owing to special conditions, a literal enforcement of the provisions of the resolution will result in unnecessary hardship and so that the spirit of the resolution shall be observed and substantial justice done.

(2) In exercising the above-mentioned powers, the board of adjustment may, in conformity with the provisions of this part, reverse or affirm, wholly

or partly, or modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made and to that end shall have all the powers of the officer from whom the appeal is taken.

History: **En. Sec. 6, Ch. 246, L. 1963; R.C.M. 1947, 16-4706(5), (6).**

76-2-224. Vote needed for board action. The concurring vote of three members of the board shall be necessary to reverse any order, requirement, decision, or determination of any such administrative official; to decide in favor of the applicant on any matter upon which it is required to pass under any such resolution; or to effect any variation in such resolution.

History: **En. Sec. 6, Ch. 246, L. 1963; R.C.M. 1947, 16-4706(7).**

76-2-225. Public access to board activities. (1) All meetings of the board shall be open to the public.

(2) The board shall keep minutes of its proceedings, showing the vote of each member upon each question or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record.

History: **En. Sec. 6, Ch. 246, L. 1963; R.C.M. 1947, 16-4706(part).**

76-2-226. Appeals to board of adjustment. (1) Appeals to the board of adjustment may be taken by any person aggrieved or by any officer, department, board, or bureau of the county affected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time, as provided by the rules of the board, by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal specifying the grounds thereof.

(2) The officer from whom the appeal is taken shall forthwith transmit to the board all papers constituting the record upon which the action appealed was taken.

(3) An appeal stays all proceedings in furtherance of the action appealed from unless the officer from whom the appeal is taken certifies to the board of adjustment after the notice of appeal shall have been filed with him that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed other than by a restraining order, which may be granted by the board of adjustment or by a court of record on application, on notice to the officer from whom the appeal is taken, and on due cause shown.

(4) The board of adjustment shall fix a reasonable time for the hearing of the appeal, give public notice thereof as well as due notice to the parties in interest, and decide the same within a reasonable time.

(5) Upon the hearing, any party may appear in person or by his attorney.

History: **En. Sec. 6, Ch. 246, L. 1963; R.C.M. 1947, 16-4706(3), (4).**

76-2-227. Appeals from board to court of record. (1) Any person or persons, jointly or severally, aggrieved by any decision of the board of adjustment or any taxpayer or any officer, department, board, or bureau of the county may present to a court of record a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within 30 days after the filing of the decision in the office of the board.

(2) Upon presentation of such petition, the court may allow a writ of certiorari directed to the board of adjustment to review such decision of the board of adjustment and shall prescribe therein the time within which a return thereto must be made and served upon the relator's attorney, which shall not be less than 10 days and may be extended by the court. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may (upon application, on notice to the board, and on due cause shown) grant a restraining order. The board of adjustment shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by such writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

(3) If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, the court may take evidence or appoint a referee to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made.

(4) The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.

History: En. Sec. 6, Ch. 246, L. 1963; R.C.M. 1947, 16-4706(8) thru (11).

76-2-228. Awarding of costs upon appeal from board decision. Costs shall not be allowed against the board unless it shall appear to the court that it acted with gross negligence, in bad faith, or with malice in making the decision appealed from.

History: En. Sec. 6, Ch. 246, L. 1963; R.C.M. 1947, 16-4706(12).

Part 3

Municipal Zoning

76-2-301. Municipal zoning authorized. For the purpose of promoting health, safety, morals, or the general welfare of the community, the city or town council or other legislative body of cities and incorporated towns is hereby empowered to regulate and restrict the height, number of stories, and size of buildings and other structures; the percentage of lot that may be occupied; the size of yards, courts, and other open spaces; the density of population; and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes.

History: En. Sec. 1, Ch. 136, L. 1929; re-en. Sec. 5305.1, R.C.M. 1935; R.C.M. 1947, 11-2701.

76-2-302. Zoning districts. (1) For any or all of the purposes of 76-2-301, the local city or town council or other legislative body may divide the municipality into districts of such number, shape, and area as may be deemed best suited to carry out the purposes of this part. Within such districts it may regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings, structures, or land.

(2) All such regulations shall be uniform for each class or kind of buildings throughout each district, but the regulations in one district may differ from those in other districts.

History: **En. Sec. 2, Ch. 136, L. 1929; re-en. Sec. 5305.2, R.C.M. 1935; amd. Sec. 1, Ch. 273, L. 1971; amd. Sec. 1, Ch. 354, L. 1973; R.C.M. 1947, 11-2702(1).**

76-2-303. Procedure to administer zoning laws — hearing and notice. (1) The city or town council or other legislative body of such municipality shall provide for the manner in which such regulations and restrictions and the boundaries of such districts shall be determined, established, and enforced and from time to time amended, supplemented, or changed.

(2) However, no such regulation, restriction, or boundary shall become effective until after a public hearing in relation thereto at which parties in interest and citizens shall have an opportunity to be heard. At least 15 days' notice of the time and place of such hearing shall be published in an official paper or a paper of general circulation in such municipality.

History: **En. Sec. 4, Ch. 136, L. 1929; re-en. Sec. 5305.4, R.C.M. 1935; R.C.M. 1947, 11-2704.**

76-2-304. Purposes of zoning. (1) Such regulations shall be made in accordance with a comprehensive plan and designed to lessen congestion in the streets; to secure safety from fire, panic, and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.

(2) Such regulations shall be made with reasonable consideration, among other things, to the character of the district and its peculiar suitability for particular uses and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such municipality.

History: **En. Sec. 3, Ch. 136, L. 1929; re-en. Sec. 5305.3, R.C.M. 1935; R.C.M. 1947, 11-2703.**

76-2-305. Alteration of zoning regulations — protest. (1) Such regulations, restrictions, and boundaries may from time to time be amended, supplemented, changed, modified, or repealed. The provisions of 76-2-303 relative to public hearings and official notice shall apply equally to all changes or amendments.

(2) In case, however, of a protest against such change signed by the owners of 20% or more either of the area of the lots included in such proposed change or of those immediately adjacent in the rear thereof extending 150 feet therefrom or of those adjacent on either side thereof within the same block or of those directly opposite thereof extending 150 feet from the street frontage of such opposite lots, such amendment shall not become effective except by the favorable vote of three-fourths of all the members of the city or town council or legislative body of such municipality.

History: **En. Sec. 5, Ch. 136, L. 1929; re-en. Sec. 5305.5, R.C.M. 1935; amd. Sec. 1, Ch. 161, L. 1969; R.C.M. 1947, 11-2705.**

76-2-306. Interim zoning ordinances. (1) The city or town council or other legislative body of such municipality, to protect the public safety, health, and welfare and without following the procedures otherwise required preliminary to the adoption of a zoning ordinance, may adopt as an urgency measure an interim ordinance prohibiting any uses which may be in conflict with a contemplated zoning proposal which the legislative body is considering or studying or intends to study within a reasonable time.

(2) Such interim ordinance shall only be applicable within the city limits and up to 1 mile beyond the corporate boundaries of the city or town and shall take effect upon passage; provided, however, a hearing is first held upon notice reasonably designed to inform all affected parties and in no event shall notice be less than publication in a newspaper of general circulation at least 7 days before the hearing.

(3) Such interim ordinance shall be of no further force and effect 6 months from the date of adoption thereof. However, after notice pursuant to 76-2-303 and pursuant to public hearing, the legislative body may extend such interim ordinance for 1 year. Any such extension shall require a two-thirds vote for passage and shall become effective upon passage. Not more than two such extensions may be adopted.

History: En. 11-2711 by Sec. 1, Ch. 488, L. 1975; R.C.M. 1947, 11-2711.

76-2-307. Zoning commission. In order to avail itself of the powers conferred by this part, except 76-2-306, the city or town council or other legislative body shall appoint a commission, to be known as the zoning commission, to recommend the boundaries of the various original districts and appropriate regulations to be enforced therein. Such commission shall make a preliminary report and hold public hearings thereon before submitting its final report, and such city or town council or other legislative body shall not hold its public hearings or take action until it has received the final report of such commission.

History: En. Sec. 6, Ch. 136, L. 1929; re-en. Sec. 5305.6, R.C.M. 1935; R.C.M. 1947, 11-2706.

76-2-308. Enforcement of zoning regulations and ordinances. (1) The city or town council or other legislative body may provide by ordinance for the enforcement of this part and of any regulation or ordinance made thereunder.

(2) In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained or any building, structure, or land is used in violation of this part or of any ordinance or other regulation made under authority conferred hereby, the proper local authorities of the municipality, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use; to restrain, correct, or abate such violation; to prevent the occupancy of such building, structure, or land; or to prevent any illegal act, conduct, business, or use in or about such premises.

History: En. Sec. 8, Ch. 136, L. 1929; re-en. Sec. 5305.8, R.C.M. 1935; R.C.M. 1947, 11-2708(part); amd. Sec. 8, Ch. 266, L. 1979.

76-2-309. Conflict with other laws. (1) Wherever the regulations made under authority of this part require a greater width or size of yards, courts, or other open spaces; require a lower height of building or less number of stories; require a greater percentage of lot to be left unoccupied; or impose other higher standards than are required in any other statute or local ordinance or regulation, the provisions of the regulations made under authority of this part shall govern.

(2) Wherever the provisions of any other statute or local ordinance or regulation require a greater width or size of yards, courts, or other open spaces; require a lower height of building or a less number of stories; require a greater percentage of lot to be left unoccupied; or impose other higher standards than are required by the regulations made under authority of this part, the provisions of such statute or local ordinance or regulation shall govern.

History: **En. Sec. 9, Ch. 136, L. 1929; re-en. Sec. 5305.9, R.C.M. 1935; R.C.M. 1947, 11-2709.**

76-2-310. Extension of municipal zoning and subdivision regulations beyond municipal boundaries. (1) The local city or town council or other legislative body which has adopted a master plan pursuant to chapter 1 may extend the application of its zoning or subdivision regulations, or both, beyond its limits in any direction but not in a county which has adopted such regulations within the contemplated area.

(2) (a) A city of the first class as defined in 7-1-4111 may not extend the application of its zoning or subdivision regulations, or both, more than 3 miles beyond its limits, a city of the second class may not so extend more than 2 miles beyond its limits, and a city or town of the third class may not so extend more than 1 mile beyond its limits.

(b) Where two or more noncontiguous cities have boundaries so near to one another as to create an area of potential conflict in the event that all cities concerned should exercise the full powers conferred by this section, 76-2-302, and 76-2-311, then the extension of zoning or subdivision regulations, or both, by these cities shall terminate at a boundary line agreed upon by the cities so concerned.

History: **En. Sec. 2, Ch. 136, L. 1929; re-en. Sec. 5305.2, R.C.M. 1935; amd. Sec. 1, Ch. 273, L. 1971; amd. Sec. 1, Ch. 354, L. 1973; R.C.M. 1947, 11-2702(part).**

76-2-311. Administration of regulations in extended area. (1) Any city or town council or other legislative body may thereafter enforce such regulations in the area to the same extent, as if such property were situated within its corporate limits, until the county board adopts a master plan pursuant to chapter 1 and accompanying zoning or subdivision resolutions, or both, which include the area.

(2) As a prerequisite to the exercise of this power, a city-county planning board whose jurisdictional area includes the area to be regulated must be formed or an existing city planning board must be increased to include two representatives from the unincorporated area which is to be affected. These representatives shall be appointed by the board of county commissioners. Such representation, however, shall cease when the county board adopts a master plan pursuant to chapter 1 and accompanying zoning or subdivision resolutions, or both, which include the area.

History: **En. Sec. 2, Ch. 136, L. 1929; re-en. Sec. 5305.2, R.C.M. 1935; amd. Sec. 1, Ch. 273, L. 1971; amd. Sec. 1, Ch. 354, L. 1973; R.C.M. 1947, 11-2702(part).**

76-2-312. Exclusion for commission-manager plan municipalities. A city or town which has as its plan of government the commission-manager plan shall be excluded from the provisions of 76-2-310 and 76-2-311 which define extraterritorial authority to review proposed subdivisions.

History: **En. Sec. 2, Ch. 136, L. 1929; re-en. Sec. 5305.2, R.C.M. 1935; amd. Sec. 1, Ch. 273, L. 1971; amd. Sec. 1, Ch. 354, L. 1973; R.C.M. 1947, 11-2702(part).**

76-2-313. Definition of community residential facility. "Community residential facility" means:

(1) a group, foster, or other home specifically provided as a place of residence for developmentally disabled or handicapped persons who do not require nursing care;

(2) a district youth guidance home established pursuant to 41-5-903;

(3) a halfway house operated in accordance with regulations of the department of health and environmental sciences for the rehabilitation of alcoholics or drug dependent persons; or

(4) a licensed adult foster family care home.

History: En. Sec. 1, Ch. 350, L. 1973; amd. Sec. 1, Ch. 129, L. 1974; amd. Sec. 6, Ch. 364, L. 1975; R.C.M. 1947, 11-2702.1.

76-2-314. Relationship of foster homes, boarding homes, and community residential facilities to zoning. (1) A foster or boarding home operated under the provision of 41-3-501 through 41-3-504 or community residential facility serving eight or fewer persons is considered a residential use of property for purposes of zoning if the home provides care on a 24-hour-a-day basis.

(2) The homes are a permitted use in all residential zones, including but not limited to residential zones for single-family dwellings. Any safety or sanitary regulation of the department or any other agency of the state or political subdivision thereof which is not applicable to residential occupancies in general may not be applied to a community residential facility serving eight or fewer persons.

(3) Nothing in this section shall be construed to prohibit a city or county from requiring a conditional use permit in order to maintain a home pursuant to the provisions of this section provided such home is licensed by the department of health and environmental sciences and the department of social and rehabilitation services.

History: En. Sec. 2, Ch. 350, L. 1973; amd. Sec. 2, Ch. 129, L. 1974; R.C.M. 1947, 11-2702.2.

76-2-315. Violations and penalties. (1) A violation of this part or of such ordinance or regulation made pursuant to 76-2-308(1) is a misdemeanor, and such city or town council or other legislative body may provide for the punishment thereof by fine or imprisonment or both.

(2) It is also empowered to provide civil penalties for such violation.

History: En. Sec. 8, Ch. 136, L. 1929; re-en. Sec. 5305.8, R.C.M. 1935; R.C.M. 1947, 11-2708(part); amd. Sec. 9, Ch. 266, L. 1979.

76-2-316 through 76-2-320 reserved.

76-2-321. Board of adjustment. (1) Such city or town council or other legislative body may provide for the appointment of a board of adjustment and in the regulations and restrictions adopted pursuant to the authority of this part may provide that the board of adjustment may, in appropriate cases and subject to appropriate conditions and safeguards, make special exceptions to the terms of the ordinance in harmony with its general purposes and intent and in accordance with the general or specific rules therein contained.

(2) An ordinance adopted pursuant to this section providing for a board of adjustment may restrict the authority of the board and provide that the city or town council or other legislative body reserves to itself the power to make certain exceptions to regulations, ordinances, or land use plans adopted pursuant to this part.

(3) The board shall adopt rules in accordance with the provisions of any ordinance adopted pursuant to this part. Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine. Such chairman or in his absence the acting chairman may administer oaths and compel the attendance of witnesses.

History: En. Sec. 7, Ch. 136, L. 1929; re-en. Sec. 5305.7, R.C.M. 1935; amd. Sec. 1, Ch. 13, L. 1975; R.C.M. 1947, 11-2707(part).

76-2-322. Membership and term of board members — vacancies. (1) The board of adjustment shall consist of five members, each to be appointed for a term of 3 years and removable for cause by the appointing authority upon written charges and after public hearing.

(2) Vacancies shall be filled for the unexpired term of any member whose term becomes vacant.

History: En. Sec. 7, Ch. 136, L. 1929; re-en. Sec. 5305.7, R.C.M. 1935; amd. Sec. 1, Ch. 13, L. 1975; R.C.M. 1947, 11-2707(1).

76-2-323. Powers of board of adjustment. (1) The board of adjustment shall have the following powers:

(a) to hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this part or of any ordinance adopted pursuant thereto;

(b) to hear and decide special exceptions to the terms of the ordinance upon which such board is required to pass under such ordinance;

(c) to authorize upon appeal in specific cases such variance from the terms of the ordinance as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship and so that the spirit of the ordinance shall be observed and substantial justice done.

(2) In exercising the above-mentioned powers, such board may, in conformity with the provisions of this part, reverse or affirm, wholly or partly, or modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made and to that end shall have all the powers of the officer from whom the appeal is taken.

History: En. Sec. 7, Ch. 136, L. 1929; re-en. Sec. 5305.7, R.C.M. 1935; amd. Sec. 1, Ch. 13, L. 1975; R.C.M. 1947, 11-2707(5), (6).

76-2-324. Vote needed for board action. The concurring vote of four members of the board shall be necessary to reverse any order, requirement, decision, or determination of any such administrative official; to decide in favor of the applicant on any matter upon which it is required to pass under any such ordinance; or to effect any variation in such ordinance.

History: En. Sec. 7, Ch. 136, L. 1929; re-en. Sec. 5305.7, R.C.M. 1935; amd. Sec. 1, Ch. 13, L. 1975; R.C.M. 1947, 11-2707(7).

76-2-325. Public access to board activities. (1) All meetings of the board shall be open to the public.

(2) The board shall keep minutes of its proceedings, showing the vote of each member upon each question or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record.

History: **En. Sec. 7, Ch. 136, L. 1929; re-en. Sec. 5305.7, R.C.M. 1935; amd. Sec. 1, Ch. 13, L. 1975; R.C.M. 1947, 11-2707(part).**

76-2-326. Appeals to board of adjustment. (1) Appeals to the board of adjustment may be taken by any person aggrieved or by any officer, department, board, or bureau of the municipality affected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time, as provided by the rules of the board, by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal specifying the grounds thereof.

(2) The officer from whom the appeal is taken shall forthwith transmit to the board all papers constituting the record upon which the action appealed was taken.

(3) An appeal stays all proceedings in furtherance of the action appealed from unless the officer from whom the appeal is taken certifies to the board of adjustment after the notice of appeal shall have been filed with him that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order, which may be granted by the board of adjustment or by a court of record on application, on notice to the officer from whom the appeal is taken, and on due cause shown.

(4) The board of adjustment shall fix a reasonable time for the hearing of the appeal, give public notice thereof as well as due notice to the parties in interest, and decide the same within a reasonable time.

(5) Upon the hearing any party may appear in person or by attorney.

History: **En. Sec. 7, Ch. 136, L. 1929; re-en. Sec. 5305.7, R.C.M. 1935; amd. Sec. 1, Ch. 13, L. 1975; R.C.M. 1947, 11-2707(3), (4).**

76-2-327. Appeals from board to court of record. (1) Any person or persons, jointly or severally, aggrieved by any decision of the board of adjustment or any taxpayer or any officer, department, board, or bureau of the municipality may present to a court of record a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within 30 days after the filing of the decision in the office of the board.

(2) Upon the presentation of such petition, the court may allow a writ of certiorari directed to the board of adjustment to review such decision of the board of adjustment and shall prescribe therein the time within which a return thereto must be made and served upon the relator's attorney, which shall not be less than 10 days and may be extended by the court. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may (on application, on notice to the board, and on due cause

shown) grant a restraining order. The board of adjustment shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by such writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

(3) If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made.

(4) The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.

History: En. Sec. 7, Ch. 136, L. 1929; re-en. Sec. 5305.7, R.C.M. 1935; amd. Sec. 1, Ch. 13, L. 1975; R.C.M. 1947, 11-2707(8) thru (11).

76-2-328. Awarding of costs upon appeal from board decision. Costs shall not be allowed against the board unless it shall appear to the court that it acted with gross negligence, in bad faith, or with malice in making the decision appealed from.

History: En. Sec. 7, Ch. 136, L. 1929; re-en. Sec. 5305.7, R.C.M. 1935; amd. Sec. 1, Ch. 13, L. 1975; R.C.M. 1947, 11-2707(12).

Part 4

Application to Governmental Agencies

76-2-401. Definitions. As used in 76-2-402, the following definitions apply:

(1) "Agency" means a board, bureau, commission, department, an authority, or other entity of state or local government.

(2) "Local zoning regulations" means zoning regulations adopted pursuant to Title 76, chapter 2.

History: En. Sec. 1, Ch. 397, L. 1981.

Compiler's Comments

1981 Title: The title to Ch. 397, L. 1981 (HB 594), read: "An act requiring land development and use by governmental agencies to be subject to a public hearing."

76-2-402. Local zoning regulations — application to agencies. Whenever an agency proposes to use public land contrary to local zoning regulations, a public hearing, as defined below, shall be held.

(1) The local board of adjustments, as provided in this chapter, shall hold a hearing within 30 days of the date the agency gives notice to the board of its intent to develop land contrary to local zoning regulations.

(2) The board shall have no power to deny the proposed use but shall act only to allow a public forum for comment on the proposed use.

History: En. Sec. 2, Ch. 397, L. 1981.

CHAPTER 3

LOCAL REGULATION OF SUBDIVISIONS

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Part 1

General Provisions

76-3-101. Short title. This chapter may be cited as the "Montana Subdivision and Platting Act".

History: En. Sec. 1, Ch. 500, L. 1973; R.C.M. 1947, 11-3859.

76-3-102. Statement of purpose. It is the purpose of this chapter to promote the public health, safety, and general welfare by regulating the subdivision of land; to prevent overcrowding of land; to lessen congestion in the streets and highways; to provide for adequate light, air, water supply, sewage disposal, parks and recreation areas, ingress and egress, and other public requirements; to require development in harmony with the natural environment; to require that whenever necessary, the appropriate approval of subdivisions be contingent upon a written finding of public interest by the governing body; and to require uniform monumentation of land subdivisions and transferring interests in real property by reference to plat or certificate of survey.

History: En. Sec. 2, Ch. 500, L. 1973; amd. Sec. 1, Ch. 498, L. 1975; amd. Sec. 1, Ch. 552, L. 1977; R.C.M. 1947, 11-3860.

76-3-103. Definitions. As used in this chapter, unless the context or subject matter clearly requires otherwise, the following words or phrases shall have the following meanings:

(1) "Certificate of survey" means a drawing of a field survey prepared by a registered surveyor for the purpose of disclosing facts pertaining to boundary locations.

(2) "Dedication" means the deliberate appropriation of land by an owner for any general and public use, reserving to himself no rights which are incompatible with the full exercise and enjoyment of the public use to which the property has been devoted.

(3) "Division of land" means the segregation of one or more parcels of land from a larger tract held in single or undivided ownership by transferring or contracting to transfer title to or possession of a portion of the tract or properly filing a certificate of survey or subdivision plat establishing the identity of the segregated parcels pursuant to this chapter.

(4) "Examining land surveyor" means a registered land surveyor duly appointed by the governing body to review surveys and plats submitted for filing.

(5) "Governing body" means a board of county commissioners or the governing authority of any city or town organized pursuant to law.

(6) "Irregularly shaped tract of land" means a parcel of land other than an aliquot part of the United States government survey section or a United States government lot, the boundaries or areas of which cannot be determined without a survey or trigonometric calculation.

(7) "Occasional sale" means one sale of a division of land within any 12-month period.

(8) "Planned unit development" means a land development project consisting of residential clusters, industrial parks, shopping centers, office building parks, or any combination thereof which comprises a planned mixture of land uses built in a prearranged relationship to each other and having open space and community facilities in common ownership or use.

(9) "Plat" means a graphical representation of a subdivision showing the division of land into lots, parcels, blocks, streets, alleys, and other divisions and dedications.

(10) "Preliminary plat" means a neat and scaled drawing of a proposed subdivision showing the layout of streets, alleys, lots, blocks, and other elements of a subdivision which furnish a basis for review by a governing body.

(11) "Final plat" means the final drawing of the subdivision and dedication required by this chapter to be prepared for filing for record with the county clerk and recorder and containing all elements and requirements set forth in this chapter and in regulations adopted pursuant thereto.

(12) "Registered land surveyor" means a person licensed in conformance with the Montana Professional Engineers' Registration Act (Title 37, chapter 67) to practice surveying in the state of Montana.

(13) "Registered professional engineer" means a person licensed in conformance with the Montana Professional Engineers' Registration Act (Title 37, chapter 67) to practice engineering in the state of Montana.

(14) "Subdivider" means any person who causes land to be subdivided or who proposes a subdivision of land.

(15) "Subdivision" means a division of land or land so divided which creates one or more parcels containing less than 20 acres, exclusive of public roadways, in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed and shall include any resubdivision and shall further include any condominium or area, regardless of its size, which provides or will provide multiple space for recreational camping vehicles, or mobile homes.

History: En. Sec. 3, Ch. 500, L. 1973; amd. Sec. 1, Ch. 334, L. 1974; amd. Sec. 2, Ch. 498, L. 1975; R.C.M. 1947, 11-3861(part).

76-3-104. What constitutes subdivision. A subdivision shall comprise only those parcels less than 20 acres which have been segregated from the original tract, and the plat thereof shall show all such parcels whether contiguous or not.

History: En. Sec. 3, Ch. 500, L. 1973; amd. Sec. 1, Ch. 334, L. 1974; amd. Sec. 2, Ch. 498, L. 1975; R.C.M. 1947, 11-3861(part).

76-3-105. Violations. Any person who violates any provision of this chapter or any local regulations adopted pursuant thereto shall be guilty of a misdemeanor and punishable by a fine of not less than $100 or more than

$500 or by imprisonment in a county jail for not more than 3 months or by both fine and imprisonment. Each sale, lease, or transfer of each separate parcel of land in violation of any provision of this chapter or any local regulation adopted pursuant thereto shall be deemed a separate and distinct offense.

History: En. Sec. 18, Ch. 500, L. 1973; amd. Sec. 2, Ch. 553, L. 1977; R.C.M. 1947, 11-3876.

Part 2

Miscellaneous Exemptions

76-3-201. Exemption for certain divisions of land. Unless the method of disposition is adopted for the purpose of evading this chapter, the requirements of this chapter shall not apply to any division of land which:

(1) is created by order of any court of record in this state or by operation of law or which, in the absence of agreement between the parties to the sale, could be created by an order of any court in this state pursuant to the law of eminent domain (Title 70, chapter 30);

(2) is created to provide security for construction mortgages, liens, or trust indentures;

(3) creates an interest in oil, gas, minerals, or water which is now or hereafter severed from the surface ownership of real property;

(4) creates cemetery lots;

(5) is created by the reservation of a life estate;

(6) is created by lease or rental for farming and agricultural purposes.

History: En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; R.C.M. 1947, 11-3862(9).

76-3-202. Exemption for structures on complying subdivided lands. Where required by this chapter, when the land upon which an improvement is situated has been subdivided in compliance with this chapter, the sale, rent, lease, or other conveyance of one or more parts of a building, structure, or other improvement situated on one or more parcels of land is not a division of land and is not subject to the terms of this chapter.

History: En. Sec. 3, Ch. 500, L. 1973; amd. Sec. 1, Ch. 334, L. 1974; amd. Sec. 2, Ch. 498, L. 1975; R.C.M. 1947, 11-3861(part); amd. Sec. 10, Ch. 266, L. 1979.

76-3-203. Exemption for certain condominiums. Condominiums constructed on land divided in compliance with this chapter are exempt from the provisions of this chapter.

History: En. Sec. 3, Ch. 500, L. 1973; amd. Sec. 1, Ch. 334, L. 1974; amd. Sec. 2, Ch. 498, L. 1975; R.C.M. 1947, 11-3861(part).

76-3-204. Exemption for conveyances of one or more parts of a structure or improvement. The sale, rent, lease, or other conveyance of one or more parts of a building, structure, or other improvement situated on one or more parcels of land is not a division of land, as that term is defined in this chapter, and is not subject to the requirements of this chapter.

History: En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; R.C.M. 1947, 11-3862(10).

76-3-205. Exemption for state-owned lands — exception. The provisions of this chapter shall not apply to the division of state-owned land unless the division creates a second or subsequent parcel from a single tract for sale, rent, or lease for residential purposes after July 1, 1974.

History: En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; R.C.M. 1947, 11-3862(5).

76-3-206. Exemption for conveyances executed prior to July 1, 1974. This chapter shall not be applicable to deeds, contracts, leases, or other conveyances executed prior to July 1, 1974.

History: En. Sec. 12, Ch. 500, L. 1973; amd. Sec. 8, Ch. 334, L. 1974; R.C.M. 1947, 11-3870(part).

76-3-207. Subdivisions exempted from review but subject to survey requirements — exceptions. (1) Except as provided in subsection (2), unless the method of disposition is adopted for the purpose of evading this chapter, the following divisions of land are not subdivisions under this chapter but are subject to the surveying requirements of 76-3-401 for divisions of land not amounting to subdivisions:

(a) divisions made outside of platted subdivisions for the purpose of relocating common boundary lines between adjoining properties;

(b) divisions made outside of platted subdivisions for the purpose of a gift or sale to any member of the landowner's immediate family;

(c) divisions made outside of platted subdivisions by sale or agreement to buy and sell where the parties to the transaction enter a covenant running with the land and revocable only by mutual consent of the governing body and the property owner that the divided land will be used exclusively for agricultural purposes;

(d) a single division of a parcel outside of platted subdivisions when the transaction is an occasional sale;

(e) for five or fewer lots within a platted subdivision, relocation of common boundaries and the aggregation of lots.

(2) Notwithstanding the provisions of subsection (1):

(a) within a platted subdivision filed with the county clerk and recorder, any division of lots which results in an increase in the number of lots or which redesigns or rearranges six or more lots must be reviewed and approved by the governing body, and an amended plat must be filed with the county clerk and recorder;

(b) any change in use of the land exempted under subsection (1)(c) for anything other than agricultural purposes subjects the division to the provisions of this chapter.

History: En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; R.C.M. 1947, 11-3862(6).

76-3-208. Subdivisions exempted from surveying and filing requirements but subject to review provisions. Subdivisions created by rent or lease are exempt from the surveying and filing requirements of this chapter but must be submitted for review and approved by the governing body before portions thereof may be rented or leased.

History: En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; R.C.M. 1947, 11-3862(7).

76-3-209. Exemption from surveying and platting requirements for lands acquired for state highways. Instruments of transfer of land which is acquired for state highways may refer by parcel and project number to state highway plans which have been recorded in compliance with 60-2-209 and are exempted from the surveying and platting requirements of this chapter. If such parcels are not shown on highway plans of record, instruments of transfer of such parcels shall be accompanied by and refer to appropriate certificates of survey and plats when presented for recording.

History: **En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; R.C.M. 1947, 11-3862(4).**

76-3-210. Subdivisions exempted from requirement of an environmental assessment. (1) Subdivisions totally within a master planning area adopted pursuant to chapter 1 wherein zoning regulations pursuant to part 3 of chapter 2 or 76-2-201 and a long-range development program of public works' projects pursuant to 76-1-601 have been adopted are deemed to be in the public interest and exempt from the requirement of an environmental assessment.

(2) (a) When a subdivision is proposed in an area for which a master plan has been adopted pursuant to chapter 1 and the proposed subdivision will be in compliance with the plan or when the subdivision will contain fewer than 10 parcels and less than 20 acres, a planning board established pursuant to chapter 1 and having jurisdiction over the area involved may exempt the subdivider from the completion of all or any portion of the environmental assessment.

(b) When such an exemption is granted, the planning board shall prepare and certify a written statement of the reasons for granting the exemption. A copy of this statement shall accompany the preliminary plat of the subdivision when it is submitted for review.

(c) Where no properly established planning board having jurisdiction exists, the governing body may grant exemptions as specified in this subsection.

History: **(1)En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; Sec. 11-3862, R.C.M. 1947; (2)En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; Sec. 11-3863, R.C.M. 1947; R.C.M. 1947, 11-3862(8), 11-3863(3.1).**

Part 3

Land Transfers

76-3-301. General restriction on transfer of title to subdivided lands. (1) Except as provided in 76-3-303, every final subdivision plat must be filed for record with the county clerk and recorder before title to the subdivided land can be sold or transferred in any manner. The clerk and recorder of the county shall refuse to accept any plat for record that fails to have the approval of 76-3-611(1) in proper form.

(2) The clerk and recorder shall notify the governing body or its designated agent of any land division described in 76-3-207(1).

(3) If transfers not in accordance with this chapter are made, the county attorney shall commence action to enjoin further sales or transfers and compel compliance with all provisions of this chapter. The cost of such action shall be imposed against the party not prevailing.

History: **En. Sec. 9, Ch. 500, L. 1973; amd. Sec. 7, Ch. 334, L. 1974; amd. Sec. 1, Ch. 553, L. 1977; R.C.M. 1947, 11-3867(part); amd. Sec. 1, Ch. 633, L. 1979.**

76-3-302. Restrictions on recording instruments relating to land subject to surveying requirements. The county clerk and recorder of any county shall not record any instrument which purports to transfer title to or possession of a parcel or tract of land which is required to be surveyed by this chapter unless the required certificate of survey or subdivision plat has been filed with the clerk and recorder and the instrument of transfer describes the parcel or tract by reference to the filed certificate or plat.

History: En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; R.C.M. 1947, 11-3862(3).

76-3-303. Contract for deed permitted if buyer protected. Notwithstanding the provisions of 76-3-301, after the preliminary plat of a subdivision has been approved or conditionally approved, the subdivider may enter into contracts to sell lots in the proposed subdivision if all of the following conditions are met:

(1) that under the terms of the contracts the purchasers of lots in the proposed subdivision make any payments to an escrow agent which must be a bank or savings and loan association chartered to do business in the state of Montana;

(2) that under the terms of the contracts and the escrow agreement the payments made by purchasers of lots in the proposed subdivision may not be distributed by the escrow agent to the subdivider until the final plat of the subdivision is filed with the county clerk and recorder;

(3) that the contracts and the escrow agreement provide that if the final plat of the proposed subdivision is not filed with the county clerk and recorder within 2 years of the preliminary plat approval, the escrow agent shall immediately refund to each purchaser any payments he has made under the contract; and

(4) that the contracts contain the following language conspicuously set out therein: "The real property which is the subject hereof has not been finally platted, and until a final plat identifying the property has been filed with the county clerk and recorder, title to the property cannot be transferred in any manner.".

History: En. Sec. 9, Ch. 500, L. 1973; amd. Sec. 7, Ch. 334, L. 1974; amd. Sec. 1, Ch. 553, L. 1977; R.C.M. 1947, 11-3867(4).

76-3-304. Effect of recording complying plat. The recording of any plat made in compliance with the provisions of this chapter shall serve to establish the identity of all lands shown on and being a part of such plat. Where lands are conveyed by reference to a plat, the plat itself or any copy of the plat properly certified by the county clerk and recorder as being a true copy thereof shall be regarded as incorporated into the instrument of conveyance and shall be received in evidence in all courts of this state.

History: En. Sec. 12, Ch. 500, L. 1973; amd. Sec. 8, Ch. 334, L. 1974; R.C.M. 1947, 11-3870(3).

76-3-305. Vacation of plats — utility easements. (1) Any plat prepared and recorded as herein provided may be vacated either in whole or in part as provided by 7-5-2501, 7-5-2502, subsections (1) and (2) of 7-14-2616, 7-14-2617, subsections (1) and (2) of 7-14-4114, and 7-14-4115, and upon such vacation the title to the streets and alleys of such vacated portions to the center thereof shall revert to the owners of the properties within the platted area adjacent to such vacated portions.

(2) However, when any poleline, pipeline, or any other public or private facility is located in a vacated street or alley at the time of the reversion of the title thereto, the owner of said public or private utility facility shall have an easement over the vacated land to continue the operation and maintenance of the public utility facility.

History: En. Sec. 12, Ch. 500, L. 1973; amd. Sec. 8, Ch. 334, L. 1974; R.C.M. 1947, 11-3870(1).

76-3-306. Covenants run with the land. All covenants shall be considered to run with the land, whether marked or noted on the subdivision plat or contained in a separate instrument recorded with the plat.

History: En. Sec. 11, Ch. 500, L. 1973; R.C.M. 1947, 11-3869.

76-3-307. Donations or grants to public considered a grant to donee. Every donation or grant to the public or to any person, society, or corporation marked or noted on a plat is to be considered a grant to the donee.

History: En. Sec. 13, Ch. 500, L. 1973; R.C.M. 1947, 11-3871.

Part 4

Survey Requirements

76-3-401. Survey requirements for lands other than subdivisions. All divisions of land for sale other than a subdivision after July 1, 1974, into parcels which cannot be described as one-thirty-second or larger aliquot parts of a United States government section or a United States government lot must be surveyed by or under the supervision of a registered land surveyor.

History: En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; R.C.M. 1947, 11-3862(1).

76-3-402. Survey and platting requirements for subdivided lands. (1) Every subdivision of land after June 30, 1973, shall be surveyed and platted in conformance with this chapter by or under the supervision of a registered land surveyor.

(2) Subdivision plats shall be prepared and filed in accordance with this chapter and regulations adopted pursuant thereto.

(3) All division of sections into aliquot parts and retracement of lines must conform to United States bureau of land management instructions, and all public land survey corners shall be filed in accordance with Corner Recordation Act of Montana (Title 70, chapter 22, part 1). Engineering plans, specifications, and reports required in connection with public improvements and other elements of the subdivision required by the governing body shall be prepared and filed by a registered engineer or a registered land surveyor as their respective licensing laws allow in accordance with this chapter and regulations adopted pursuant thereto.

History: En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; R.C.M. 1947, 11-3862(2).

76-3-403. Monumentation. (1) The department of commerce shall, in conformance with the Montana Administrative Procedure Act, prescribe uniform standards for monumentation and for the form, accuracy, and descriptive content of records of survey.

(2) It shall be the responsibility of the governing body to require the replacement of all monuments removed in the course of construction.

History: En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; R.C.M. 1947, 11-3862(11), (12); amd. Sec. 6, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department of commerce" for "department of community affairs" in (1).

Transfer of Function: Section 6, Ch. 274, L. 1981, provided in part: "(1) The department of community affairs is abolished.

(2) The following functions of the department of community affairs are transferred to the department of commerce: . . .

(f) prescribing standards for monumentation under 76-3-403; . . ."

76-3-404. Certificate of survey. (1) Within 180 days of the completion of a survey, the registered land surveyor responsible for the survey, whether he is privately or publicly employed, shall prepare and submit for filing a certificate of survey in the county in which the survey was made if the survey:

(a) provides material evidence not appearing on any map filed with the county clerk and recorder or contained in the records of the United States bureau of land management;

(b) reveals a material discrepancy in such map;

(c) discloses evidence to suggest alternate locations of lines or points;

(d) establishes one or more lines not shown on a recorded map, the positions of which are not ascertainable from an inspection of such map without trigonometric calculations.

(2) A certificate of survey will not be required for any survey which is made by the United States bureau of land management or which is preliminary or which will become part of a subdivision plat being prepared for recording under the provisions of this chapter.

(3) Certificates of survey shall be legibly drawn, printed, or reproduced by a process guaranteeing a permanent record and shall conform to monumentation and surveying requirements promulgated under this chapter.

History: En. Sec. 14, Ch. 500, L. 1973; R.C.M. 1947, 11-3872; amd. Sec. 2, Ch. 633, L. 1979.

76-3-405. Administration of oaths by registered land surveyor. (1) Every registered land surveyor may administer and certify oaths when:

(a) it becomes necessary to take testimony for the identification of old corners or reestablishment of lost or obliterated corners;

(b) a corner or monument is found in a deteriorating condition and it is desirable that evidence concerning it be perpetuated;

(c) the importance of the survey makes it desirable to administer an oath to his assistants for the faithful performance of their duty.

(2) A record of oaths shall be preserved as part of the field notes of the survey and noted on the certificate of survey filed under 76-3-404.

History: En. Sec. 17, Ch. 500, L. 1973; R.C.M. 1947, 11-3875; amd. Sec. 11, Ch. 266, L. 1979.

Part 5

Local Regulations

76-3-501. Local subdivision regulations. Before July 1, 1974, the governing body of every county, city, and town shall adopt and provide for the enforcement and administration of subdivision regulations reasonably providing for the orderly development of their jurisdictional areas; for the coordination of roads within subdivided land with other roads, both existing and planned; for the dedication of land for roadways and for public utility easements; for the improvement of roads; for the provision of adequate open spaces for travel, light, air, and recreation; for the provision of adequate transportation, water, drainage, and sanitary facilities; for the avoidance or minimization of congestion; and for the avoidance of subdivision which would involve unnecessary environmental degradation and the avoidance of danger of injury to health, safety, or welfare by reason of natural hazard or the lack of water, drainage, access, transportation, or other public services or would necessitate an excessive expenditure of public funds for the supply of such services.

History: En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; R.C.M. 1947, 11-3863(part).

76-3-502. Repealed. Sec. 4, Ch. 236, L. 1981.

History: En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; R.C.M. 1947, 11-3863(part); amd. Sec. 6, Ch. 274, L. 1981.

76-3-503. Hearing on proposed regulations. Before the governing body adopts subdivision regulations pursuant to 76-3-501, it shall hold a public hearing thereon and shall give public notice of its intent to adopt such regulations and of the public hearing by publication of notice of the time and place of the hearing in a newspaper of general circulation in the county not less than 15 or more than 30 days prior to the date of the hearing.

History: En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; R.C.M. 1947, 11-3863(part).

76-3-504. Minimum requirements for subdivision regulations. The subdivision regulations adopted under this chapter shall, at a minimum:

(1) require the subdivider to submit to the governing body an environmental assessment as prescribed in 76-3-603;

(2) establish procedures consistent with this chapter for the submission and review of subdivision plats;

(3) prescribe the form and contents of preliminary plats and the documents to accompany final plats;

(4) provide for the identification of areas which, because of natural or man-caused hazards, are unsuitable for subdivision development and prohibit subdivisions in these areas unless the hazards can be eliminated or overcome by approved construction techniques;

(5) prohibit subdivisions for building purposes in areas located within the floodway of a flood of 100-year frequency as defined by Title 76, chapter 5, or determined to be subject to flooding by the governing body;

(6) prescribe standards for:

(a) the design and arrangement of lots, streets, and roads;
(b) grading and drainage;
(c) water supply and sewage and solid waste disposal which, at a minimum, meet the regulations adopted by the department of health and environmental sciences under 76-4-104;
(d) the location and installation of utilities;
(7) provide procedures for the administration of the park and open-space requirements of this chapter;
(8) provide for the review of preliminary plats by affected public utilities and those agencies of local, state, and federal government having a substantial interest in a proposed subdivision; such utility or agency review may not delay the governing body's action on the plat beyond the time limits specified in this chapter, and the failure of any agency to complete a review of a plat may not be a basis for rejection of the plat by the governing body.

History: En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; R.C.M. 1947, 11-3863(2), (3); amd. Sec. 1, Ch. 236, L. 1981; amd. Sec. 17, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendments — Composite Section: Chapter 236 deleted all of the language and replaced it with an introduction and subsections (1) through (8). The prior language read: "(1) Not later than December 31, 1973, the department of community affairs, through its division of planning, shall, in conformance with the Montana Administrative Procedure Act, prescribe reasonable minimum requirements for subdivision regulations adopted pursuant to this chapter.

(2) The minimum requirements shall include detailed criteria for the content of the environmental assessment required by this chapter. In prescribing the minimum contents of the subdivision regulations, the department of community affairs, through its division of planning, shall require the submission by the subdivider to the governing body of an environmental assessment.

(3) The department shall provide for the review of preliminary plats by those agencies of state and local government and affected public utilities having a substantial interest in a proposed subdivision. Such agency or utility review shall not delay the governing body's action on the plat beyond the time limit specified herein, and the failure of any agency to complete a review of a plat shall not be a basis for rejection of the plat by the governing body."

Chapter 274 substituted "department of commerce" for "department of community affairs, through its division of planning" in (1) and (2).

In preparing the composite of Ch. 236 and Ch. 274, which both amended 76-3-504, the Code Commissioner did not include the amendatory language in Chapter 274 pertaining to the transfer of functions of the department of community affairs to the department of commerce. The reason for this is that Ch. 236 entirely deleted the subsections containing these functions and instead established minimum subdivision regulation requirements for local governments.

76-3-505. Provision for summary review of minor subdivisions. Local subdivision regulations shall include procedures for the summary review and approval of subdivision plats containing five or fewer parcels where proper access to all lots is provided, where no land in the subdivision will be dedicated to public use for parks or playgrounds, and which have been approved by the department of health and environmental sciences where such approval is required by part 1 of chapter 4; provided that reasonable local regulations may contain additional requirements for summary approval.

History: En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; R.C.M. 1947, 11-3863(5).

76-3-506. Provision for granting variances. Subdivision regulations may authorize the governing body to grant variances from the regulations when strict compliance will result in undue hardship and when it is not essential to the public welfare. Any variance granted pursuant to this section must be based on specific variance criteria contained in the subdivision regulations.

History: En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; R.C.M. 1947, 11-3863(6).

76-3-507. Provision for bonding requirements to insure construction of public improvements. Local regulations may provide that, in lieu of the completion of the construction of any public improvements prior to the approval of a final plat, the governing body shall require a bond or other reasonable security, in an amount and with surety and conditions satisfactory to it, providing for and securing the construction and installation of such improvements within a period specified by the governing body and expressed in the bonds or other security.

History: En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; R.C.M. 1947, 11-3863(7).

76-3-508. Repealed. Sec. 4, Ch. 236, L. 1981.

History: En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; R.C.M. 1947, 11-3863(8).

Part 6

Local Review Procedure

76-3-601. Submission of preliminary plat for review. (1) Except where a plat is eligible for summary approval, the subdivider shall present to the governing body or the agent or agency designated thereby the preliminary plat of the proposed subdivision for local review. The preliminary plat shall show all pertinent features of the proposed subdivision and all proposed improvements.

(2) (a) When the proposed subdivision lies within the boundaries of an incorporated city or town, the preliminary plat shall be submitted to and approved by the city or town governing body.

(b) When the proposed subdivision is situated entirely in an unincorporated area, the preliminary plat shall be submitted to and approved by the governing body of the county. However, if the proposed subdivision lies within 1 mile of a third-class city or town or within 2 miles of a second-class city or within 3 miles of a first-class city, the county governing body shall submit the preliminary plat to the city or town governing body or its designated agent for review and comment.

(c) If the proposed subdivision lies partly within an incorporated city or town, the proposed plat thereof must be submitted to and approved by both the city or town and the county governing bodies.

(d) When a proposed subdivision is also proposed to be annexed to a municipality, the governing body of the municipality shall coordinate the subdivision review and annexation procedures to minimize duplication of hearings, reports, and other requirements whenever possible.

(3) This section and 76-3-604, 76-3-605, and 76-3-608 through 76-3-610 do not limit the authority of certain municipalities to regulate subdivisions beyond their corporate limits pursuant to 7-3-4444.

History: **En. Sec. 8, Ch. 500, L. 1973; amd. Sec. 6, Ch. 334, L. 1974; amd. Sec. 3, Ch. 498, L. 1975; amd. Sec. 1, Ch. 555, L. 1977; R.C.M. 1947, 11-3866(part); amd. Sec. 1, Ch. 89, L. 1981.**

Compiler's Comments

1981 Amendment: Inserted subsection (2)(d).

Interim Study Committee Bill: Chapter 89, L. 1981 (SB 35), was introduced at the request of the interim Study Committee on Annexation Laws. See committee report, Legislative Council, 1980.

76-3-602. Fees. The governing body may establish reasonable fees to be paid by the subdivider to defray the expense of reviewing subdivision plats.

History: **En. Sec. 10, Ch. 500, L. 1973; R.C.M. 1947, 11-3868.**

76-3-603. Contents of environmental assessment. Where required, the environmental assessment shall accompany the preliminary plat and shall include:

(1) a description of every body or stream of surface water as may be affected by the proposed subdivision, together with available groundwater information, and a description of the topography, vegetation, and wildlife use within the area of the proposed subdivision;

(2) maps and tables showing soil types in the several parts of the proposed subdivision and their suitability for any proposed developments in those several parts;

(3) a community impact report containing a statement of anticipated needs of the proposed subdivision for local services, including education and busing; roads and maintenance; water, sewage, and solid waste facilities; and fire and police protection;

(4) such additional relevant and reasonable information as may be required by the governing body.

History: **En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; R.C.M. 1947, 11-3863(4); amd. Sec. 2, Ch. 236, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted "governing body" for "department through its division of planning" at the end of (4).

76-3-604. Review of preliminary plat. (1) The governing body or its designated agent or agency shall review the preliminary plat to determine whether it conforms to the local master plan if one has been adopted pursuant to chapter 1, to the provisions of this chapter, and to rules prescribed or adopted pursuant to this chapter.

(2) The governing body shall approve, conditionally approve, or reject the preliminary plat within 60 days of its presentation unless the subdivider consents to an extension of the review period.

(3) If the governing body rejects or conditionally approves the preliminary plat, it shall forward one copy of the plat to the subdivider accompanied by a letter over the appropriate signature stating the reason for rejection or enumerating the conditions which must be met to assure approval of the final plat.

History: **En. Sec. 8, Ch. 500, L. 1973; amd. Sec. 6, Ch. 334, L. 1974; amd. Sec. 3, Ch. 498, L. 1975; amd. Sec. 1, Ch. 555, L. 1977; R.C.M. 1947, 11-3866(part).**

76-3-605. Hearing on preliminary plat. (1) The governing body or its authorized agent or agency shall hold a public hearing on the preliminary plat and shall consider all relevant evidence relating to the public health, safety, and welfare, including the environmental assessment, to determine whether the plat should be approved, conditionally approved, or disapproved by the governing body.

(2) When a proposed subdivision is also proposed to be annexed to a municipality, the governing body of the municipality shall hold joint hearings on the preliminary plat and annexation whenever possible.

(3) Notice of such hearing shall be given by publication in a newspaper of general circulation in the county not less than 15 days prior to the date of the hearing. The subdivider and each property owner of record immediately adjoining the land included in the plat shall also be notified of the hearing by registered or certified mail not less than 15 days prior to the date of the hearing.

(4) When a hearing is held by an agent or agency designated by the governing body, the agent or agency shall act in an advisory capacity and recommend to the governing body the approval, conditional approval, or disapproval of the plat. This recommendation must be submitted to the governing body in writing not later than 10 days after the public hearing.

History: En. Sec. 8, Ch. 500, L. 1973; amd. Sec. 6, Ch. 334, L. 1974; amd. Sec. 3, Ch. 498, L. 1975; amd. Sec. 1, Ch. 555, L. 1977; R.C.M. 1947, 11-3866(part); amd. Sec. 2, Ch. 89, L. 1981.

Compiler's Comments

1981 Amendment: Inserted subsection (2).

Interim Study Committee Bill: Chapter 89, L. 1981 (SB 35), was introduced at the request of the interim Study Committee on Annexation Laws. See committee report, Legislative Council, 1980.

76-3-606. Dedication of land to public — cash donations. (1) A plat of a residential subdivision shall show that one-ninth of the combined area of lots 5 acres or less in size and one-twelfth of the combined area of lots greater than 5 acres in size, exclusive of all other dedications, is forever dedicated to the public for parks or playgrounds. No dedication may be required for the combined area of those lots in the subdivision which are larger than 10 acres exclusive of all other dedications. The governing body, in consultation with the planning board having jurisdiction, may determine suitable locations for such parks and playgrounds.

(2) Where the dedication of land for parks or playgrounds is undesirable because of size, topography, shape, location, or other circumstances, the governing body may, for good cause shown, make an order to be endorsed and certified on the plat accepting a cash donation in lieu of the dedication of land and equal to the fair market value of the amount of land that would have been dedicated. For the purpose of this section, the fair market value is the value of the unsubdivided, unimproved land. Such cash donation shall be paid into the park fund to be used for the purchase of additional lands or for the initial development of parks and playgrounds.

(3) The park dedication and cash in lieu requirements of subsections (1) and (2) do not apply to any division that creates only one additional lot.

History: En. Sec. 6, Ch. 500, L. 1973; amd. Sec. 4, Ch. 334, L. 1974; R.C.M. 1947, 11-3864(1), (2); amd. Sec. 1, Ch. 703, L. 1979.

76-3-607. Waiver of land dedication and cash donation requirements. (1) If the proposed plat provides for a planned unit development with land permanently set aside for park and recreational uses sufficient to meet the needs of the persons who will ultimately reside therein, the governing body may issue an order waiving land dedication and cash donation requirements.

(2) If a tract of land is being developed under single ownership as a part of an overall plan and part of the tract has been subdivided and sufficient park lands have been dedicated to the public from the area that has been subdivided to meet the requirements of 76-3-606 for the entire tract being developed, the governing body shall issue an order waiving the land dedication and cash donation requirements for the subsequently platted area.

(3) The local governing body may waive dedication and cash donation requirements:

(a) where all of the parcels in a subdivision are 5 acres or more in size and where the subdivider enters a covenant to run with the land and revocable only by mutual consent of the governing body and the property owner that the parcels in the subdivision will never be subdivided into parcels of less than 5 acres and that all parcels in the subdivision will be used for single family dwellings;

(b) when the subdivider agrees to create a property owners' association for the proposed subdivision and to deed to the association land to be held in perpetuity for use as parks or playgrounds, and the area of land to be deeded to the association shall equal the amount that would otherwise have been dedicated to public use;

(c) for subdivision to be created by rent or lease where the subdivider agrees to develop parks or playgrounds within the subdivision for the common use of the residents of the subdivision, and the area of land to be reserved for this purpose shall equal the amount that would otherwise have been dedicated to the public.

History: **En. Sec. 6, Ch. 500, L. 1973; amd. Sec. 4, Ch. 334, L. 1974; R.C.M. 1947, 11-3864(3) thru (7).**

76-3-608. Criteria for local government review. (1) The basis for the governing body's decision to approve, conditionally approve, or disapprove a subdivision shall be whether the preliminary plat, environmental assessment, public hearing, planning board recommendations, and additional information demonstrate that development of the subdivision would be in the public interest. The governing body shall disapprove any subdivision which it finds not to be in the public interest.

(2) To determine whether the proposed subdivision would be in the public interest, the governing body shall issue written findings of fact which weigh the following criteria for public interest:

(a) the basis of the need for the subdivision;
(b) expressed public opinion;
(c) effects on agriculture;
(d) effects on local services;
(e) effects on taxation;
(f) effects on the natural environment;
(g) effects on wildlife and wildlife habitat; and
(h) effects on the public health and safety.

History: **En. Sec. 8, Ch. 500, L. 1973; amd. Sec. 6, Ch. 334, L. 1974; amd. Sec. 3, Ch. 498, L. 1975; amd. Sec. 1, Ch. 555, L. 1977; R.C.M. 1947, 11-3866(4).**

76-3-609. Review procedure for minor subdivisions. Subdivisions containing five or fewer parcels where proper access to all lots is provided and in which no land is to be dedicated to the public for parks or playgrounds are to be reviewed as follows:

(1) The governing body must approve, conditionally approve, or disapprove the first such subdivision from a tract of record within 35 days of the submission of an application for approval thereof.

(2) The governing body shall state in writing the conditions which must be met if the subdivision is conditionally approved or what local regulations would not be met by the subdivision if it disapproves the subdivision.

(3) The requirements for holding a public hearing and preparing an environmental assessment shall not apply to the first such subdivision created from a tract of record.

(4) Subsequent subdivisions from a tract of record shall be reviewed under 76-3-505 and regulations adopted pursuant to that section.

History: En. Sec. 8, Ch. 500, L. 1973; amd. Sec. 6, Ch. 334, L. 1974; amd. Sec. 3, Ch. 498, L. 1975; amd. Sec. 1, Ch. 555, L. 1977; R.C.M. 1947, 11-3866(6).

76-3-610. Effect of approval of preliminary plat. (1) Upon approving or conditionally approving a preliminary plat, the governing body shall provide the subdivider with a dated and signed statement of approval. This approval shall be in force for not more than 1 calendar year. At the end of this period the governing body may, at the request of the subdivider, extend its approval for no more than 1 calendar year, except that the governing body may extend its approval for a period of more than 1 year if that approval period is included as a specific condition of a written agreement between the governing body and the subdivider, according to 76-3-507.

(2) After the preliminary plat is approved, the governing body and its subdivisions may not impose any additional conditions as a prerequisite to final plat approval providing said approval is obtained within the original or extended approval period as provided in subsection (1).

History: En. Sec. 8, Ch. 500, L. 1973; amd. Sec. 6, Ch. 334, L. 1974; amd. Sec. 3, Ch. 498, L. 1975; amd. Sec. 1, Ch. 555, L. 1977; R.C.M. 1947, 11-3866(part); amd. Sec. 1, Ch. 223, L. 1981.

Compiler's Comments

1981 Amendment: Added the exception for approval extension at the end of (1) following "for no more than 1 calendar year"; added "the original or extended approval period as provided in subsection (1)" at the end of (2).

76-3-611. Review of final plat. (1) The governing body shall examine every final subdivision plat and shall approve it when and only when:

(a) it conforms to the conditions of approval set forth on the preliminary plat and to the terms of this chapter and regulations adopted pursuant thereto; and

(b) the county treasurer has certified that no real property taxes assessed and levied on the land to be subdivided are delinquent.

(2) (a) The governing body may require that final subdivision plats and certificates of survey be reviewed for errors and omissions in calculation or drafting by an examining land surveyor before recording with the county clerk and recorder. When the survey data shown on the plat or certificate of survey meets the conditions set forth by or pursuant to this chapter, the examining land surveyor shall so certify in a printed or stamped certificate on the plat or certificate of survey. Such certificate shall be signed by him.

(b) No land surveyor shall act as an examining land surveyor in regard to a plat or certificate of survey in which he has a financial or personal interest.

History: **En. Sec. 9, Ch. 500, L. 1973; amd. Sec. 7, Ch. 334, L. 1974; amd. Sec. 1, Ch. 553, L. 1977; R.C.M. 1947, 11-3867(part); amd. Sec. 1, Ch. 273, L. 1981.**

Compiler's Comments

1981 Amendment: Added subsection (1)(b).

76-3-612. Abstract of title required for review process. (1) The subdivider shall submit with the final plat a certificate of a title abstracter showing the names of the owners of record of the land to be subdivided and the names of lienholders or claimants of record against the land and the written consent to the subdivision by the owners of the land, if other than the subdivider, and any lienholders or claimants of record against the land.

(2) The governing body may provide for the review of the abstract or certificate of title of the land in question by the county attorney where the land lies in an unincorporated area or by the city or town attorney when the land lies within the limits of a city or town.

History: **En. Sec. 7, Ch. 500, L. 1973; amd. Sec. 5, Ch. 334, L. 1974; R.C.M. 1947, 11-3865; amd. Sec. 186, Ch. 575, L. 1981.**

Compiler's Comments

1981 Amendment: Deleted "licensed" before "title abstracter" in (1).

76-3-613. Index of plats to be kept by county clerk and recorder. (1) The county clerk and recorder shall maintain an index of all recorded subdivision plats and certificates of survey.

(2) This index shall list plats and certificates of survey by the quarter section, section, township, and range in which the platted or surveyed land lies and shall list the recording or filing numbers of all plats depicting lands lying within each quarter section. Each quarter section list shall be definitive to the exclusion of all other quarter sections. The index shall also list the names of all subdivision plats in alphabetical order and the place where filed.

History: **En. Sec. 15, Ch. 500, L. 1973; R.C.M. 1947, 11-3873.**

76-3-614. Correction of recorded plat. When a recorded plat does not definitely show the location or size of lots or blocks or the location or width of any street or alley, the governing body may at its own expense cause a new and correct survey and plat to be made and recorded in the office of the county clerk and recorder. The corrected plat must, to the extent possible, follow the plan of the original survey and plat. The surveyor making the resurvey shall endorse the corrected plat referring to the original plat and noting the defect existing therein and the corrections made.

History: **En. Sec. 16, Ch. 500, L. 1973; R.C.M. 1947, 11-3874.**

CHAPTER 4

STATE REGULATION OF SUBDIVISIONS

Part 1 — Sanitation in Subdivisions

Section

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Part 1

Sanitation in Subdivisions

76-4-101. Public policy. It is the public policy of this state to extend present laws controlling water supply, sewage disposal, and solid waste disposal to include individual wells affected by adjoining sewage disposal and individual sewage systems to protect the quality and potability of water for public water supplies and domestic uses and to protect the quality of water for other beneficial uses, including uses relating to agriculture, industry, recreation, and wildlife.

History: En. Sec. 148, Ch. 197, L. 1967; amd. Sec. 1, Ch. 509, L. 1973; R.C.M. 1947, 69-5001.

76-4-102. Definitions. As used in this part, unless the context clearly indicates otherwise, the following words or phrases have the following meanings:

(1) "Board" means the board of health and environmental sciences.

(2) "Department" means department of health and environmental sciences.

(3) "Facilities" means public or private facilities for the supply of water or disposal of sewage or solid waste and any pipes, conduits, or other stationary method by which water, sewage, or solid wastes might be transported or distributed.

(4) "Public water supply system" or "public sewage disposal system" means, respectively, a water supply or sewage disposal system that serves 10 or more families or 25 or more persons for at least 60 days out of the calendar year.

(5) "Sanitary restriction" means a prohibition against the erection of any dwelling, shelter, or building requiring facilities for the supply of water or the disposition of sewage or solid waste or the construction of water supply or sewage or solid waste disposal facilities until the department has approved plans for those facilities.

(6) "Solid wastes" means all putrescible and nonputrescible solid wastes (except body wastes), including garbage, rubbish, street cleanings, dead animals, yard clippings, and solid market and solid industrial wastes.

(7) "Subdivision" means a division of land or land so divided which creates one or more parcels containing less than 20 acres, exclusive of public roadways, in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed and includes any resubdivision and any condominium or area, regardless of size, which provides permanent multiple space for recreational camping vehicles or mobile homes.

History: En. Sec. 149, Ch. 197, L. 1967; amd. Sec. 2, Ch. 509, L. 1973; amd. Sec. 1, Ch. 529, L. 1975; amd. Sec. 2, Ch. 557, L. 1977; R.C.M. 1947, 69-5002(part).

76-4-103. What constitutes subdivision. A subdivision shall comprise only those parcels of less than 20 acres which have been created by a division of land, and the plat thereof shall show all such parcels, whether contiguous or not.

History: En. Sec. 149, Ch. 197, L. 1967; amd. Sec. 2, Ch. 509, L. 1973; amd. Sec. 1, Ch. 529, L. 1975; amd. Sec. 2, Ch. 557, L. 1977; R.C.M. 1947, 69-5002(part).

76-4-104. Rules for administration and enforcement. (1) The department shall adopt reasonable rules, including adoption of sanitary standards, necessary for administration and enforcement of this part.

(2) The rules and standards shall provide the basis for approving subdivision plats for various types of water, sewage facilities, and solid waste disposal, both public and private, and shall be related to size of lots, contour of land, porosity of soil, groundwater level, distance from lakes, streams, and wells, type and construction of private water and sewage facilities, and other factors affecting public health and the quality of water for uses relating to agriculture, industry, recreation, and wildlife.

(3) The rules shall further provide for:

(a) the furnishing to the department of a copy of the plat and other documentation showing the layout or plan of development, including:

(i) total development area;

(ii) total number of proposed dwelling units;

(b) adequate evidence that a water supply that is sufficient in terms of quality, quantity, and dependability will be available to ensure an adequate supply of water for the type of subdivision proposed;

(c) evidence concerning the potability of the proposed water supply for the subdivision;

(d) adequate evidence that a sewage disposal facility is sufficient in terms of capacity and dependability;

(e) standards and technical procedures applicable to storm drainage plans and related designs, in order to insure proper drainage ways;

(f) standards and technical procedures applicable to sanitary sewer plans and designs, including soil percolation testing and required percolation rates and site design standards for on-lot sewage disposal systems when applicable;

(g) standards and technical procedures applicable to water systems;

(h) standards and technical procedures applicable to solid waste disposal;

(i) requiring evidence to establish that, if a public sewage disposal system is proposed, provision has been made for the system and, if other methods of sewage disposal are proposed, evidence that the systems will comply with state and local laws and regulations which are in effect at the time of submission of the preliminary or final plan or plat.

History: En. Sec. 152, Ch. 197, L. 1967; amd. Sec. 3, Ch. 509, L. 1973; amd. Sec. 3, Ch. 529, L. 1975; amd. Sec. 3, Ch. 557, L. 1977; R.C.M. 1947, 69-5005(part).

76-4-105. Lot fees. (1) The department shall adopt reasonable rules setting forth fees, not to exceed $30 per parcel, for services rendered in the review of plats and subdivisions. The rules shall provide for a schedule of fees to be paid by the applicant for plat or subdivision review to the department for deposit in the agency fund provided for in 17-2-102. The fees shall be used for review of plats and subdivisions based on the complexity of the subdivision, including but not limited to:

(a) number of lots in the subdivision;

(b) the type of water system to serve the development;

(c) the type of sewage disposal to serve the development; and

(d) the degree of environmental research necessary to supplement the review procedure.

(2) The department shall adopt rules to determine the distribution of lot fees between the local governing body and the department as provided in 76-4-128. When a subdivision is reviewed under the master plan provisions of 76-4-124, the local governing body shall, within 20 days after receiving an application under the Montana Subdivision and Platting Act, distribute the lot fees as determined by this subsection.

(3) A fee as described in this section is not required for the review of subdivisions in which divisions are made for the purpose of relocating common boundary lines unless the division will result in the installation of additional water supply or sewage disposal facilities.

History: Ap. p. Sec. 152, Ch. 197, L. 1967; amd. Sec. 3, Ch. 509, L. 1973; amd. Sec. 3, Ch. 529, L. 1975; amd. Sec. 3, Ch. 557, L. 1977; Sec. 69-5005, R.C.M. 1947; Ap. p. Sec. 150, Ch. 197, L. 1967; amd. Sec.4, Ch. 509, L. 1973; amd. Sec. 2, Ch. 529, L. 1975; amd. Sec. 12, Ch. 140, L. 1977; amd. Sec. 1, Ch. 554, L. 1977; Sec. 69-5003, R.C.M. 1947; R.C.M. 1947, 69-5003(part), 69-5005(part); amd. Sec. 1, Ch. 553, L. 1981.

Compiler's Comment

1981 Amendment: Changed fees in (1) from "$25" to "$30" per parcel.

Saving Clause: Section 3, Ch. 553, L. 1981, provided: "This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act [October 1, 1981]."

Nonseverability: Section 4, Ch. 553, L. 1981, provided: "It is the intent of the legislature that each part of this act is essentially dependent upon every other part; and if one part is held unconstitutional or invalid, all other parts are invalid."

76-4-106. Cooperation with other governmental agencies. (1) The department may require the use of records of all state, county, and municipal agencies and may seek the assistance of those agencies.

(2) State, county, and city officers and employees, including local health officers and sanitarians, shall cooperate with the board and the department in furthering the purposes of this part so far as is practical and consistent with their own duties.

History: **En. Sec. 8, Ch. 509, L. 1973; R.C.M. 1947, 69-5009.**

76-4-107. Authority to inspect and monitor. In order to carry out the objectives of this part, to monitor the installation of sewage disposal and water supply systems, and to prevent the occurrence of water pollution problems associated with subdivision development, the department or the board whenever a public water supply or public sewage disposal system is proposed or has been constructed may:

(1) enter upon any public or private property, at reasonable times and after presentation of appropriate credentials by an authorized representative of the department, to inspect such systems in order to assure that the plans and specifications approved for the system have been adhered to and that the provisions of this part, rules, or orders are being satisfied;

(2) require as a condition of approval that records concerning the operation of a public sewage disposal or public water supply system be maintained or that monitoring equipment or wells be installed, used, and maintained for the collection of data related to water quality.

History: **En. 69-5010 by Sec. 1, Ch. 557, L. 1977; R.C.M. 1947, 69-5010.**

76-4-108. Enforcement. (1) If a written complaint alleging violation is made to the department or if the department has reason to believe that a person has violated this part or any rule thereunder and if a violation is found to exist, the department shall issue notice and hold a hearing pursuant to the Montana Administrative Procedure Act.

(2) In addition to or instead of issuing an order, the department may initiate appropriate action for injunction or for recovery of penalty as provided in this part.

History: **En. Sec. 6, Ch. 509, L. 1973; R.C.M. 1947, 69-5007.**

76-4-109. Penalties. (1) A person violating any provision of this part, except 76-4-122(1), or any rule or order issued under this part is guilty of an offense and subject to a fine of not to exceed $1,000.

(2) Action under subsection (1) does not bar enforcement of this part or rules or orders issued under it by injunction or other appropriate remedy.

(3) The purpose of this section is to provide additional and cumulative remedies.

History: **En. Sec. 7, Ch. 509, L. 1973; R.C.M. 1947, 69-5008(part).**

76-4-110. Additional remedies available. This part does not abridge or alter rights of action or remedies in equity or under the common law or statutory law, criminal or civil, nor does any provision of this part or any act done by virtue of it estop the state, any municipality or other subdivision of the state, or any person in the exercise of his rights in equity or under the common law or statutory law.

History: **En. Sec. 7, Ch. 509, L. 1973; R.C.M. 1947, 69-5008(part).**

76-4-111. Exemption for certain condominiums. Condominiums constructed on land divided in compliance with the Montana Subdivision and Platting Act and this part are exempt from provisions of this part.

History: En. Sec. 149, Ch. 197, L. 1967; amd. Sec. 2, Ch. 509, L. 1973; amd. Sec. 1, Ch. 529, L. 1975; amd. Sec. 2, Ch. 557, L. 1977; R.C.M. 1947, 69-5002(part).

76-4-112 through 76-4-120 reserved.

76-4-121. Restrictions on subdivision activities. Until the local governing body has certified that a subdivision is to be provided with municipal facilities for a supply of water and disposal of sewage and solid waste or that the department has indicated that the subdivision is subject to no restrictions, a person may not file a subdivision plat with a county clerk and recorder, make disposition of any lot within a subdivision, erect any facility for the supply of water or disposal of sewage or solid waste, erect any building or shelter in a subdivision which requires facilities for the supply of water or disposal of sewage or solid waste, or occupy any permanent buildings in a subdivision.

History: En. Sec. 150, Ch. 197, L. 1967; amd. Sec. 4, Ch. 509, L. 1973; amd. Sec. 2, Ch. 529, L. 1975; amd. Sec. 12, Ch. 140, L. 1977; amd. Sec. 1, Ch. 554, L. 1977; R.C.M. 1947, 69-5003(4).

76-4-122. Filing or recording of noncomplying map or plat prohibited. (1) The county clerk and recorder shall not file or record any map or plat showing a subdivision unless it complies with the provisions of this part.

(2) A county clerk and recorder may not accept a subdivision plat for filing until one of the following conditions has been met:

(a) the person wishing to file the plat has obtained approval of the local health officer having jurisdiction and has filed the approval with the department, and the department has indicated by stamp or certificate that it has approved the plat and plans and specifications and that the subdivision is subject to no sanitary restriction whenever department approval is necessary; or

(b) whenever department approval is not necessary, the person wishing to file the plat has obtained a certificate from the governing body that the subdivision is inside a master planning area and will be provided with municipal facilities for the supply of water and disposal of sewage and solid waste.

History: (1)En. Sec. 151, Ch. 197, L. 1967; R.C.M. 1947, 69-5004; (2)En. Sec. 150, Ch. 197, L. 1967; amd. Sec.4, Ch. 509, L. 1973; amd. Sec. 2, Ch. 529, L. 1975; amd. Sec. 12, Ch. 140, L. 1977; amd. Sec. 1, Ch. 554, L. 1977; Sec. 69-5003, R.C.M. 1947; R.C.M. 1947, 69-5003(7), 69-5004.

76-4-123. Department review and approval required outside master planning areas. Outside master planning areas adopted pursuant to chapter 1, a person may not file a subdivision plat with a county clerk and recorder, make disposition of a lot within a subdivision, erect any facility for the supply of water or disposal of sewage or solid waste, erect a building or shelter in a subdivision which requires facilities for the supply of water or disposal of sewage or solid waste, or occupy a permanent building in a subdivision until the department has indicated that the subdivision is subject to no sanitary restriction.

History: En. Sec. 150, Ch. 197, L. 1967; amd. Sec. 4, Ch. 509, L. 1973; amd. Sec. 2, Ch. 529, L. 1975; amd. Sec. 12, Ch. 140, L. 1977; amd. Sec. 1, Ch. 554, L. 1977; R.C.M. 1947, 69-5003(1).

76-4-124. Type of review and approval required within master planning areas. (1) Within master planning areas adopted pursuant to chapter 1, a subdivision is not subject to sanitary restrictions when the local governing body certifies that municipal facilities for the supply of water and disposal of sewage and solid waste will be provided for the subdivision as provided in 76-4-127. In this case, department approval is not necessary.

(2) To the extent that municipal facilities for the supply of water or disposal of sewage or solid waste are not to be provided for a subdivision as certified to by the governing body, the person wishing to subdivide must obtain department approval as provided in 76-4-122(2)(a).

History: En. Sec. 150, Ch. 197, L. 1967; amd. Sec. 4, Ch. 509, L. 1973; amd. Sec. 2, Ch. 529, L. 1975; amd. Sec. 12, Ch. 140, L. 1977; amd. Sec. 1, Ch. 554, L. 1977; R.C.M. 1947, 69-5003(2), (3).

76-4-125. Review of subdivisions excluded from all or some of the provisions of the subdivision and platting act. (1) When a subdivision as defined in this part is excluded from the provisions of 76-3-302 and 76-3-401 through 76-3-403, but not 76-3-201, and the subdivision is otherwise subject to the provisions of this part, plans and specifications of the subdivision as defined in this part shall be submitted to the department and the department shall indicate by certificate that it has approved the plans and specifications and that the subdivision is not subject to a sanitary restriction. The plan review by the department shall be as follows:

(a) At any time after the developer has submitted an application under the Montana Subdivision and Platting Act, the developer shall present to the department a preliminary plan of the proposed development, whatever information the developer feels necessary for its subsequent review, and information required by the department.

(b) The department must give final action of the proposed plan within 60 days unless an environmental impact statement is required, at which time this deadline may be increased to 120 days.

(2) A subdivision excluded from the provisions of chapter 3 shall be submitted for review by the department according to the provisions of this part, except that the following divisions are not subject to review by the department:

(a) the exclusions cited in 76-3-201 and 76-3-204;

(b) divisions made for the purpose of acquiring additional land to become part of an approved parcel, provided that no dwelling or structure requiring water or sewage disposal is to be erected on the additional acquired parcel; and

(c) divisions made for purposes other than the construction of water supply or sewage and solid waste disposal facilities as the department specifies by rule.

History: En. Sec. 150, Ch. 197, L. 1967; amd. Sec. 4, Ch. 509, L. 1973; amd. Sec. 2, Ch. 529, L. 1975; amd. Sec. 12, Ch. 140, L. 1977; amd. Sec. 1, Ch. 554, L. 1977; R.C.M. 1947, 69-5003(8), (10).

76-4-126. Right to hearing. Upon denial of approval of subdivision plans and specifications relating to environmental health facilities, the person who is aggrieved by such denial may request a hearing before the board.

Such hearings will be held pursuant to the Montana Administrative Procedure Act.

History: **En. Sec. 5, Ch. 509, L. 1973; R.C.M. 1947, 69-5006.**

76-4-127. Notice of certification to department that water and waste services will be provided by local government. (1) When a subdivision is reviewed under the master plan provisions of 76-4-124, the local governing body shall, within 20 days after receiving an application under the Montana Subdivision and Platting Act, send notice of certification to the department that a subdivision has been submitted for approval and that municipal facilities for the supply of water and disposal of sewage and solid waste will be provided for the subdivision.

(2) The notice of certification shall include the following:

(a) the name and address of the applicant;

(b) a copy of the preliminary plat or a final plat where a preliminary plat is not necessary;

(c) the number of proposed parcels in the subdivision;

(d) a copy of any applicable zoning ordinances in effect;

(e) how construction of the sewage disposal and water supply systems or extensions will be financed;

(f) a copy of the master plan if one has not yet been submitted to the department;

(g) the relative location of the subdivision to the city or town; and

(h) certification that adequate municipal facilities for the supply of water and disposal of sewage and solid waste are available or will be provided within 1 year after the notice of certification is issued.

History: **En. Sec. 150, Ch. 197, L. 1967; amd. Sec. 4, Ch. 509, L. 1973; amd. Sec. 2, Ch. 529, L. 1975; amd. Sec. 12, Ch. 140, L. 1977; amd. Sec. 1, Ch. 554, L. 1977; R.C.M. 1947, 69-5003(part).**

76-4-128. Delegation of department review to local government. (1) The department shall delegate to a local government the authority to review a subdivision under this part when the subdivision involves five or fewer parcels and the local government has qualified personnel to adequately review the water supply and sewage and solid waste disposal facilities proposed for the subdivision.

(2) When a local government has conducted a review of a subdivision containing five or fewer parcels pursuant to this section, it shall advise the department of its recommendation for approval or disapproval of the subdivision. The department shall, within 10 days after receiving the recommendation of the local government, make a final decision on the subdivision.

(3) In delegating authority pursuant to this section, the department shall enter into an agreement with the local government wherein the department shall agree to transfer not less than $15 of the fee per parcel collected pursuant to 76-4-105 to the local government for the review of subdivisions containing five or fewer parcels.

History: **En. Sec. 152, Ch. 197, L. 1967; amd. Sec. 3, Ch. 509, L. 1973; amd. Sec. 3, Ch. 529, L. 1975; amd. Sec. 3, Ch. 557, L. 1977; R.C.M. 1947, 69-5005(5); amd. Sec. 2, Ch. 553, L. 1981.**

Compiler's Comment

1981 Amendment: Changed fees in (3) from "$10" to "$15" per parcel.

Saving Clause: Section 3, Ch. 553, L. 1981, provided: "This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act [October 1, 1981]."

Nonseverability: Section 4, Ch. 553, L. 1981, provided: "It is the intent of the legislature that each part of this act is essentially dependent upon every other part; and if one part is held unconstitutional or invalid, all other parts are invalid."

76-4-129. Joint application form and concurrent review. (1) Within 90 days after July 1, 1977, the department shall prepare and distribute a joint application form that can be used by an applicant to apply for approval of a subdivision under the provisions of this part and the provisions of chapter 3. When an application is received by either the department or a local government, the department or local government is responsible for forwarding the appropriate parts of the application to the other entity.

(2) The review required by this part and the provisions of chapter 3 shall occur concurrently.

History: En. Sec. 150, Ch. 197, L. 1967; amd. Sec. 4, Ch. 509, L. 1973; amd. Sec. 2, Ch. 529, L. 1975; amd. Sec. 12, Ch. 140, L. 1977; amd. Sec. 1, Ch. 554, L. 1977; R.C.M. 1947, 69-5003(11); amd. Sec. 3, Ch. 236, L. 1981; amd. Sec. 6, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendments — Composite: Chapter 236 deleted "and the department of community affairs" after "the department" near the beginning of (1).

Chapter 274 substituted "department of commerce" for "department of community affairs" in (1).

In preparing the composite of 1981 amendments to this section, the Code Commissioner did not include the change made by Ch. 274 because the deletion made by Ch. 236 is in the nature of a repealer (see 1-2-204).

Transfer of Function: Section 6, Ch. 274, L. 1981, provided in part: "(1) The department of community affairs is abolished.

(2) The following functions of the department of community affairs are transferred to the department of commerce: . . .

(g) establishing minimum subdivision review rules under 76-3-502 and 76-4-129; . . ."

76-4-130. Deviation from plans or specifications. A person may not construct or use a facility which deviates from the plans and specifications filed with the department until the department has approved the deviation.

History: En. Sec. 150, Ch. 197, L. 1967; amd. Sec. 4, Ch. 509, L. 1973; amd. Sec. 2, Ch. 529, L. 1975; amd. Sec. 12, Ch. 140, L. 1977; amd. Sec. 1, Ch. 554, L. 1977; R.C.M. 1947, 69-5003(9).

76-4-131. Applicability of public water supply laws. The exclusions provided for in 76-4-121 through 76-4-130 shall not relieve any person of the duty to comply with the requirements of Title 75, chapter 6.

History: En. Sec. 150, Ch. 197, L. 1967; amd. Sec. 4, Ch. 509, L. 1973; amd. Sec. 2, Ch. 529, L. 1975; amd. Sec. 12, Ch. 140, L. 1977; amd. Sec. 1, Ch. 554, L. 1977; R.C.M. 1947, 69-5003(6).

Parts 2 through 10 reserved

Part 11

Out-of-State Sales of In-State Subdivisions

76-4-1101. Definitions. Unless the context requires otherwise, in this part the following definitions apply:

(1) "Blanket encumbrance" shall be considered to mean a trust deed or mortgage or any other lien or encumbrance, mechanics' lien or otherwise, securing or evidencing the payment of money and affecting land to be subdivided or affecting more than one lot or parcel of subdivided land or an agreement affecting more than one such lot or parcel by which the owner or

subdivider holds said subdivision under an option, contract to sell, or trust agreement.

(2) "Board" means the board of realty regulation provided for in 2-15-1867.

(3) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(4) "Subdivision" and "subdivided lands" mean any tract of land which is hereafter divided into five or more parcels, a parcel of which is less than 5 acres in size, and which is offered for sale or lease outside the state of Montana.

History: (1)En. Sec. 9, Ch. 191, L. 1963; Sec. 67-2109, R.C.M. 1947; (2) thru (4)En. Sec. 1, Ch. 191, L. 1963; amd. Sec. 321, Ch. 350, L. 1974; Sec. 67-2101, R.C.M. 1947; R.C.M. 1947, 67-2101, 67-2109; amd. Sec. 6, Ch. 497, L. 1979; amd. Sec. 3, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department of commerce" for "department of professional and occupational licensing" in (3); changed internal references to the department and the board.

76-4-1102. Rules. The board may adopt rules necessary for the enforcement of this part.

History: En. Sec. 2, Ch. 191, L. 1963; amd. Sec. 322, Ch. 350, L. 1974; R.C.M. 1947, 67-2102.

76-4-1103. Notice of intention to offer subdivided lands. Prior to the time when subdivided lands are to be offered for sale or lease outside the state of Montana, the owner, his agent, or the subdivider shall notify the board in writing of his intention to sell or lease such offering.

History: En. Sec. 3, Ch. 191, L. 1963; amd. Sec. 323, Ch. 350, L. 1974; R.C.M. 1947, 67-2103(1).

76-4-1104. Contents of notice. The notice of intention shall contain the following information:

(1) the name and address of the owner;

(2) the name and address of the subdivider;

(3) the legal description and area of lands, together with a map showing the layout proposed and relation to existing streets or roads;

(4) a true statement of the conditions of the title to the land, particularly including all encumbrances thereon;

(5) a true statement of the terms and conditions on which it is intended to dispose of the land, together with copies of any and all forms of conveyance intended to be used;

(6) a true statement of the provision for legal access, sewage disposal, and public utilities in the proposed subdivision, including water, electricity, gas, and telephone facilities;

(7) copies of any advertising, information, promotion brochures, or similar material depicting the existing property or as it is to exist, which might cause or tend to induce purchase of the property or an interest therein when the material is or might be circulated outside of this state;

(8) such other information as the owner, his agent, or the subdivider may desire to present.

History: En. Sec. 3, Ch. 191, L. 1963; amd. Sec. 323, Ch. 350, L. 1974; R.C.M. 1947, 67-2103(2).

76-4-1105. Fee for filing notice of intention. A filing fee of $50 shall accompany the notice of intention provided for in 76-4-1103.

History: En. Sec. 4, Ch. 191, L. 1963; R.C.M. 1947, 67-2104.

76-4-1106. Additional information required by board. After receiving the notice of intention, the board may require additional information concerning the project as it considers necessary, for which it may prepare a questionnaire for the owner, his agent, or the subdivider to answer.

History: En. Sec. 5, Ch. 191, L. 1963; amd. Sec. 324, Ch. 350, L. 1974; R.C.M. 1947, 67-2105.

76-4-1107. Fee for filing board questionnaire. When the questionnaire provided for in 76-4-1106 is filed, the person filing the questionnaire shall pay to the department a filing fee of $100.

History: En. Sec. 6, Ch. 191, L. 1963; amd. Sec. 325, Ch. 350, L. 1974; R.C.M. 1947, 67-2106(part).

76-4-1108. Disposition of fees and charges. (1) Fees and charges provided for by this part shall be paid to the department and deposited by it with the state treasurer.

(2) The state treasurer shall place 5% of these fees and charges in the general fund and 95% of these fees and charges in the earmarked revenue fund.

(3) Fees deposited in the earmarked revenue fund may be used to pay claims for expense incurred in the administration of this part when the claims have been approved as provided by law.

History: En. Sec. 6, Ch. 191, L. 1963; amd. Sec. 325, Ch. 350, L. 1974; R.C.M. 1947, 67-2106(part).

76-4-1109. Investigation of subdivisions. The board may investigate any subdivision being offered for sale or lease under the provisions of this part. For the purpose of an investigation, the board may:

(1) use and rely upon any relevant information or data concerning a subdivision obtained by it from the federal housing administration, the United States veterans administration, or any other agency having comparable duties and functions in relation to subdivisions or property therein;

(2) require reports prepared by competent authorities as to any hazard to which the subdivision may be subject or any factor which might affect the value or utility of lots or parcels within the subdivision;

(3) require evidence of compliance with the requirements of appropriate authorities;

(4) require an inspection of the subdivision to be made.

History: En. Sec. 7, Ch. 191, L. 1963; amd. Sec. 326, Ch. 350, L. 1974; R.C.M. 1947, 67-2107.

76-4-1110. Inspection of records by board. (1) Records of the sale or lease of parcels within a subdivision subject to the provisions of this part shall be subject to inspection by the board.

(2) The board shall be notified of any change of address affecting the location of the owner's, subdivider's, or agent's records or of any change in depository for the impounding of purchasers' money in accordance with the provisions herein.

History: En. Sec. 13, Ch. 191, L. 1963; amd. Sec. 330, Ch. 350, L. 1974; R.C.M. 1947, 67-2113.

76-4-1111. Notice of multiple sales or leases to one purchaser or lessee. When five or more lots or parcels within a subdivision subject to the provisions of this part are optioned, leased, or sold to another or when an interest therein is acquired by one owner, lessee, or optionee, the board shall be notified by the parties to the transaction.

History: En. Sec. 12, Ch. 191, L. 1963; amd. Sec. 329, Ch. 350, L. 1974; R.C.M. 1947, 67-2112.

76-4-1112. Required provisions in subdivision sales contracts. Every sales contract relating to the purchase of real property in a subdivision subject to the provisions of this part shall clearly set forth the legal description of the property, the principal amount of the blanket encumbrances outstanding at the date of the contract, and the terms of the contract.

History: En. Sec. 11, Ch. 191, L. 1963; R.C.M. 1947, 67-2111.

76-4-1113. Required provisions for protection of purchasers and lessees. It is unlawful for the owner or subdivider to offer to sell or lease or to sell or lease lots or parcels within a subdivision to persons residing out of the state of Montana unless one of the following conditions is complied with:

(1) All sums paid or advanced by purchasers shall be impounded in an escrow or other depository acceptable to the board until:

(a) (i) the title or other interest contracted for, whether it be title of record, equitable, or other interest, is delivered to such purchaser or lessee; and

(ii) a proper release is obtained from any such blanket encumbrance; or

(b) either the owner, subdivider, purchaser, or lessee defaults in his undertaking, in which event the money shall be paid to the party who is not in default and is entitled thereto.

(2) The title to the subdivision is to be held in trust under an agreement of trust acceptable to the board until a proper release from such blanket encumbrance is obtained and title or other interest contracted for is delivered to such purchaser or lessee.

(3) A bond in the amount of $2,500 to the state of Montana is furnished to the board for the benefit and protection of purchasers or lessees of such lots or parcels, in such amount and subject to the terms as may be approved by the board, which shall provide for the return of moneys paid or advanced by any purchaser or lessee for or on account of purchase or lease of any such lot or parcel if the interest contracted for is not delivered or a proper release from such blanket encumbrance is not obtained. However, if the purchaser or lessee, by reason of default, is not entitled to the return of the money or any portion thereof, then the bond shall be exonerated to the extent of the amount of the money to which such purchaser or lessee is not entitled.

History: En. Sec. 10, Ch. 191, L. 1963; amd. Sec. 328, Ch. 350, L. 1974; R.C.M. 1947, 67-2110.

76-4-1114. Restriction on advertising. It is unlawful for any person to incorporate in any advertising material or use for any advertising purposes the results or findings of the board as provided for in this part.

History: En. Sec. 8, Ch. 191, L. 1963; amd. Sec. 327, Ch. 350, L. 1974; R.C.M. 1947, 67-2108.

76-4-1115. Misdemeanors enumerated. The following acts are misdemeanors:

(1) the willful violation of or failure to comply with any of the provisions of this part;

(2) the willful violation, failure, omission, or neglect to obey, observe, or comply with any order, permit, decision, demand, or requirement of the board;

(3) the offering for sale or lease as an agent, salesman, or broker for a subdivider, developer, or owner of subdivided lands or a subdivision, wherever situated, which is being offered for sale outside the state of Montana without first complying with the provisions of this part.

History: En. Sec. 16, Ch. 191, L. 1963; amd. Sec. 332, Ch. 350, L. 1974; R.C.M. 1947, 67-2116; amd. Sec. 12, Ch. 266, L. 1979.

76-4-1116. Enforcement procedures — hearing. (1) When in the opinion of the board a person has violated or is violating or is about to violate any of the provisions of this part, the board may order the person to desist and refrain from doing so.

(2) If an examination of the project shows that the sale or lease would constitute misrepresentation to or deceit or fraud of the purchasers or lessees of lots or parcels in a subdivision, the board may issue an order prohibiting the sale or lease, or either, of the property in this state.

(3) If, after such an order is made, a request for a hearing by the board is filed in writing and a hearing is not held within 60 days thereafter, the order is rescinded.

History: En. Sec. 14, Ch. 191, L. 1963; amd. Sec. 331, Ch. 350, L. 1974; R.C.M. 1947, 67-2114.

76-4-1117. Accrual of cause of action. (1) For the purpose of calculating the period of any applicable statute of limitations in any action or proceeding, either civil or criminal, involving any violation of this part, the cause of action shall be considered to have accrued not earlier than the time of recording with the county clerk and recorder of the county in which the property was sold or leased in violation of this part, which recording describes a lot or parcel so wrongfully sold or leased.

(2) This section does not prohibit the maintenance of such action at any time during the recording of such instruments.

History: En. Sec. 15, Ch. 191, L. 1963; R.C.M. 1947, 67-2115; amd. Sec. 13, Ch. 266, L. 1979.

Part 12

In-State Sales of Out-of-State Subdivisions

76-4-1201. Short title. This part may be cited as the "Foreign Land Sales Practices Act".

History: En. Sec. 20, Ch. 97, L. 1969; R.C.M. 1947, 67-2136.

76-4-1202. Definitions. When used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the board of realty regulation provided for in 2-15-1867.

(2) "Chairman" means the chairman of the board of realty regulation.

(3) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(4) "Disposition" includes sale, lease, assignment, or any other transaction concerning a subdivision if undertaken for gain or profit.

(5) "Offer" includes every inducement, solicitation, or attempt to encourage a person to acquire an interest in land if undertaken for gain or profit.

(6) "Person" means an individual, corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership, unincorporated association, two or more of any of the foregoing having a joint or common interest, or any other legal or commercial entity.

(7) "Purchaser" means a person who acquires or attempts to acquire or succeeds to an interest in land.

(8) "Subdivider" means any owner of subdivided land who offers it for disposition or the principal agent of an inactive owner.

(9) "Subdivision" and "subdivided lands" mean any land which is divided or is proposed to be divided for the purpose of disposition into five or more lots, parcels, units, or interests and also include any land, whether contiguous or not, if five or more lots, parcels, units, or interests are offered as a part of a common promotional plan of advertising and sale.

History: En. Sec. 1, Ch. 97, L. 1969; amd. Sec. 333, Ch. 350, L. 1974; R.C.M. 1947, 67-2117; amd. Sec. 7, Ch. 497, L. 1979; amd. Sec. 3, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department of commerce" for "department of professional and occupational licensing" in (3); changed internal references to the department and the board.

76-4-1203. Administration and rules. (1) This part shall be administered by the board. In the administration of this part, the board shall have all of the powers and duties as stated in 37-51-201(2), (3), and (4) and 37-51-205.

(2) The board shall adopt reasonable rules relating to the administration of this part, but not inconsistent therewith, which may be amended or repealed. The rules shall include but need not be limited to:

(a) provisions for advertising standards to assure full and fair disclosure;

(b) provisions for escrow or trust agreements or other means reasonably to assure that all improvements referred to in the application for registration and advertising will be completed and that purchasers will receive the interest in land contracted for;

(c) provisions for operating procedures; and

(d) other rules necessary and proper to accomplish the purpose of this part.

History: En. Secs. 2, 10, Ch. 97, L. 1969; amd. Secs. 334, 340, Ch. 350, L. 1974; R.C.M. 1947, 67-2118(part), 67-2126(1); amd. Sec. 8, Ch. 497, L. 1979.

Compiler's Comments

Statement of intent. The statement of intent adopted with HB 606 (Ch. 497, L. 1979) provided: "A statement of intent is required for HB 606 in that it delegates rulemaking authority to the board of realty regulation in Section 8.

Section 8 allows the board to prescribe rules relating to:

'(a) provisions for advertising standards to assure full and fair disclosure;

(b) provisions for escrow or trust agreements or other means reasonably to assure that all improvements referred to in the application for registration and advertising will be completed and that purchasers will receive the interest in land contracted for;

(c) provisions for operating procedures; and

(d) other rules necessary and proper to accomplish the purpose of this part.'

It is intended that only those rules necessary to carry out the above functions will be adopted by the board of realty regulation. All rules should have as their primary purpose the protection of the public. No rules may be adopted which restrict entry into the real estate industry except as expressly authorized by statute."

76-4-1204. Board involvement in lawsuits. The board may intervene in a suit involving subdivided lands. In any suit by or against a subdivider involving subdivided lands, the subdivider promptly shall furnish the department notice of the suit and copies of all pleadings.

History: En. Sec. 10, Ch. 97, L. 1969; amd. Sec. 340, Ch. 350, L. 1974; R.C.M. 1947, 67-2126(4).

76-4-1205. Cooperation with other states. The board shall cooperate with similar agencies in other jurisdictions to establish uniform filing procedures and forms; uniform public offering statements, advertising standards, and rules; and common administrative practices.

History: En. Sec. 10, Ch. 97, L. 1969; amd. Sec. 340, Ch. 350, L. 1974; R.C.M. 1947, 67-2126(6).

76-4-1206. Investigative powers of board. The board may:

(1) make necessary public or private investigations within or outside of this state to determine whether any person has violated or is about to violate this part or any rule or order hereunder or to aid in the enforcement of this part or in the prescribing of rules and forms hereunder;

(2) require or permit any person to file a statement in writing, under oath or otherwise as the board determines, as to all the facts and circumstances concerning the matter to be investigated;

(3) contract with similar agencies in this state or other jurisdictions to perform investigative functions.

History: En. Secs. 10, 11, Ch. 97, L. 1969; amd. Secs. 340, 341, Ch. 350, L. 1974; R.C.M. 1947, 67-2126(5)(b), 67-2127(1).

76-4-1207. Procedure to gather information — subpoena power. (1) For the purpose of any investigation or proceeding under this part, the board or any officer designated by rule may administer oaths or affirmations and, upon its own motion or upon request of any party, may subpoena witnesses, compel their attendance, take evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts or any other matter reasonably calculated to lead to the discovery of material evidence.

(2) Upon failure to obey a subpoena or to answer questions propounded by the investigating officer and upon reasonable notice to all persons affected thereby, the board may apply to any district court of this state for an order compelling compliance.

History: En. Sec. 11, Ch. 97, L. 1969; amd. Sec. 341, Ch. 350, L. 1974; R.C.M. 1947, 67-2127(2), (3).

76-4-1208. Appeals procedure. (1) Any person directly affected by any ruling, determination, or decision of the board or any officer thereof may appeal to the board for hearing and review by serving written notice of appeal upon the chairman within 15 days after such rule, determination, or decision is mailed to or served upon the person. Notice of appeal shall state specifically the matters that the appellant desires reviewed but shall not act as a stay unless otherwise provided by this part.

(2) Upon receipt of notice of appeal, the chairman shall serve upon the appellant notice of time and place of said hearing not less than 15 days prior

to the date of hearing, to be held in the offices of the department in Helena, Montana, or elsewhere as the chairman shall order.

(3) The board may postpone or continue a hearing from time to time as it considers necessary.

(4) If the appellant or his representative fails to appear at the hearing after due notice and good cause for continuance is not shown, the board shall render its decision upon the evidence presented to it.

History: En. Sec. 11, Ch. 97, L. 1969; amd. Sec. 341, Ch. 350, L. 1974; R.C.M. 1947, 67-2127(part).

76-4-1209. General rules governing appeals. (1) The board is not bound by any laws of evidence of this state.

(2) No member of the board shall hear any matter in which he has a personal interest, nor shall he represent any person or witness at the hearing.

(3) (a) Four members of the board shall constitute a quorum, one of whom must be the chairman.

(b) Any party to the proceedings may challenge any board member in writing, served upon the chairman of the board 5 days in advance of any scheduled appeal hearing, stating the reasons therefor, and if the board shall find merit in the challenge, it shall disqualify the challenged member. If disqualification reduces the board membership to less than four, the remaining members shall appoint disinterested people to fill the vacancies to provide a four-man hearing board.

(4) The decision of any three board members shall constitute the decision of the board on any issue presented for its decision.

History: En. Sec. 11, Ch. 97, L. 1969; amd. Sec. 341, Ch. 350, L. 1974; R.C.M. 1947, 67-2127(part).

76-4-1210. Scope of review — board jurisdiction. The board shall have continuing jurisdiction over all matters heard by it to examine additional evidence or to hear additional testimony and to revise, modify, alter, amend, or reverse all orders, demands, findings, and decisions made by it at any time and shall not lose jurisdiction until jurisdiction has been taken by a court of competent jurisdiction in a proceeding filed in such court.

History: En. Sec. 11, Ch. 97, L. 1969; amd. Sec. 341, Ch. 350, L. 1974; R.C.M. 1947, 67-2127(part).

76-4-1211. Application fee. The board shall charge a fee not to exceed $500 for each application for registration of subdivided lands received in accordance with this part.

History: En. Sec. 2, Ch. 97, L. 1969; amd. Sec. 334, Ch. 350, L. 1974; R.C.M. 1947, 67-2118(part).

76-4-1212. Disposition of fee. The application fee shall be paid into the earmarked revenue fund to the credit of the board and is hereby appropriated for the purposes of carrying out the provisions of this part, subject to 37-1-101(6).

History: En. Sec. 2, Ch. 97, L. 1969; amd. Sec. 334, Ch. 350, L. 1974; R.C.M. 1947, 67-2118(part).

76-4-1213. Financial management. (1) All expenditures of the funds by the board under the provisions of this part shall be certified and approved by the board and paid by the appropriate state officials. Payment shall be made upon warrants appropriately drawn out of the proper funds.

(2) The department shall provide a system of accounting which shall show the amount of money received therefor and also an itemized statement of expenses in connection therewith.

(3) The board may make orders concerning the disbursement of the money in the earmarked revenue fund, including the payment of compensation and expenses of board members.

(4) The board may accept grants-in-aid from any source.

History: En. Secs. 2, 10, Ch. 97, L. 1969; amd. Secs. 334, 340, Ch. 350, L. 1974; R.C.M. 1947, 67-2118(part), 67-2126(5)(c).

76-4-1214 through 76-4-1220 reserved.

76-4-1221. Exemptions for certain subdivisions. Unless the method of disposition is adopted for the purpose of evasion of this part, the provisions of this part do not apply to:

(1) a subdivision as to which the plan of disposition is to dispose to 10 or fewer persons;

(2) a subdivision as to which the board has granted an exemption as provided in 76-4-1225.

History: En. Sec. 3, Ch. 97, L. 1969; R.C.M. 1947, 67-2119(part).

76-4-1222. Exemptions for certain securities and notes. Unless the method of disposition is adopted for the purpose of evasion of this part, the provisions of this part do not apply to offers or dispositions of:

(1) securities currently registered with the securities commissioner of this state;

(2) any interest in oil, gas, or other minerals or any royalty interest therein if the offers or dispositions of such interests are regulated as securities by the United States or by the securities commissioner of this state;

(3) securities or units of interest issued by a real estate investment trust regulated under any state or federal statute;

(4) evidences of indebtedness secured by a mortgage or deed of trust of real estate.

History: En. Sec. 3, Ch. 97, L. 1969; R.C.M. 1947, 67-2119(part); amd. Sec. 8, Ch. 351, L. 1979.

76-4-1223. Exemptions for certain transactions. Unless the method of disposition is adopted for the purpose of evasion of this part, the provisions of this part do not apply to offers or dispositions of an interest in land:

(1) by a purchaser of subdivided lands for his own account in a single or isolated transaction;

(2) if fewer than five separate lots, parcels, units, or interests in subdivided lands are offered by a person in a period of 12 months;

(3) on which there is a residential, commercial, or industrial building or as to which there is a legal obligation on the part of the seller to construct such a building within 2 years from date of disposition;

(4) to persons who are engaged in the business of construction of buildings for resale or to persons who acquire an interest in subdivided lands for the purpose of engaging and do engage in the business of construction of buildings for resale.

History: En. Sec. 3, Ch. 97, L. 1969; R.C.M. 1947, 67-2119(part).

76-4-1224. Miscellaneous exemptions. Unless the method of disposition is adopted for the purpose of evasion of this part, the provisions of this part do not apply to offers or dispositions of an interest in land:

(1) pursuant to court order;

(2) by any government or government agency;

(3) as cemetery lots or interests.

History: En. Sec. 3, Ch. 97, L. 1969; R.C.M. 1947, 67-2119(part).

76-4-1225. Exemption granted by board. The board may exempt a subdivision of 25 or fewer lots, parcels, units, or interests from the provisions of this part if it determines that the plan of promotion and disposition is primarily directed to persons in the local community in which the subdivision is situated.

History: En. Sec. 10, Ch. 97, L. 1969; amd. Sec. 340, Ch. 350, L. 1974; R.C.M. 1947, 67-2126(7).

76-4-1226. Regulation of disposition of interests in subdivisions. Unless the subdivided lands or the transaction is exempt by 76-4-1221 through 76-4-1224:

(1) no person may offer or dispose in this state of any interest in subdivided lands located without this state prior to the time the subdivided lands are registered in accordance with this part;

(2) no person may dispose of any interest in subdivided lands without this state unless a current public offering statement is delivered to the purchaser and the purchaser is afforded a reasonable opportunity to examine the public offering statement prior to the disposition.

History: En. Sec. 4, Ch. 97, L. 1969; R.C.M. 1947, 67-2120.

76-4-1227. Application for registration. (1) The application for registration of subdivided lands shall be filed with the department as prescribed by the board's rules.

(2) The board may accept registrations filed in other states or with the federal government.

History: En. Secs. 5, 10, Ch. 97, L. 1969; amd. Sec. 335, 340, Ch. 350, L. 1974; R.C.M. 1947, 67-2121(part), 67-2126(5)(a).

76-4-1228. Contents of application relating to subdivided land. The application shall contain the following documents and information:

(1) a legal description of the subdivided lands offered for registration, together with a map showing the division proposed or made, the dimensions of the lots, parcels, units, or interests, and the relation of the subdivided lands to existing streets, roads, and other off-site improvements;

(2) a statement, in a form acceptable to the board, of the condition of the title to the subdivided lands including encumbrances, as of a specified date within 30 days of the date of application, by a title opinion of an attorney licensed to practice in this state, not a salaried employee, officer, or director of the applicant or owner, or by other evidence of title acceptable to the board;

(3) copies of the instruments which will be delivered to a purchaser to evidence his interest in the subdivided lands and of the contracts and other agreements which a purchaser will be required to agree to or sign;

(4) copies of the instruments by which the interest in the subdivided lands was acquired and a statement of any lien or encumbrance upon the title and copies of the instruments creating the lien or encumbrance, if any, with data as to recording;

(5) if there is a lien or encumbrance affecting more than one lot, parcel, unit, or interest, a statement of the consequences for a purchaser of failure to discharge the lien or encumbrance and the steps, if any, taken to protect the purchaser in case of this eventuality;

(6) copies of instruments creating easements, restrictions, or other encumbrances affecting the subdivided lands;

(7) a statement of the zoning and other governmental regulations affecting the use of the subdivided lands and also of any existing tax and existing or proposed special taxes or assessments which affect the subdivided lands;

(8) a statement of the existing provisions for access, sewage, disposal, water, and other public utilities in the subdivision; a statement of the improvements to be installed; the schedule for their completion; and a statement as to the provisions for improvement maintenance.

History: En. Sec. 5, Ch. 97, L. 1969; amd. Sec. 335, Ch. 350, L. 1974; R.C.M. 1947, 67-2121(1)(b), (f), (g), (h), (i), (j), (k), (l).

76-4-1229. Contents of application relating to applicant. The application shall contain the following information and documents:

(1) the applicant's name and address and the form, date, and jurisdiction of organization and the address of each of its offices in this state;

(2) the name, address, and principal occupation for the past 5 years of every director and officer of the applicant or person occupying a similar status or performing similar functions and the extent and nature of his interest in the applicant or the subdivided lands as of a specified date within 30 days of the filing of the application.

History: En. Sec. 5, Ch. 97, L. 1969; amd. Sec. 335, Ch. 350, L. 1974; R.C.M. 1947, 67-2121(1)(d), (e).

76-4-1230. Additional contents of application. The application shall contain the following information and documents:

(1) an irrevocable appointment of the department to receive service of any lawful process in any noncriminal proceeding arising under this part against the applicant or his personal representative;

(2) the states or jurisdictions in which an application for registration or similar document has been filed and any adverse order, judgment, or decree entered in connection with the subdivided lands by the regulatory authorities in each jurisdiction or by any court;

(3) a narrative description of the promotional plan for the disposition of the subdivided lands, together with copies of all advertising material which has been prepared for public distribution by any means of communication;

(4) the proposed public offering statement;

(5) any other information, including any current financial statement, which the board by its rules requires for the protection of purchasers.

History: En. Sec. 5, Ch. 97, L. 1969; amd. Sec. 335, Ch. 350, L. 1974; R.C.M. 1947, 67-2121(1)(a), (c), (m), (n), (o).

76-4-1231. Consolidation of application for subsequent offerings. If the subdivider registers additional subdivided lands to be offered for disposition, he may consolidate the subsequent registration with any earlier registration offering subdivided lands for disposition under the same promotional plan.

History: **En. Sec. 5, Ch. 97, L. 1969; amd. Sec. 335, Ch. 350, L. 1974; R.C.M. 1947, 67-2121(2).**

76-4-1232. Report of material changes affecting application. The subdivider shall immediately report any material changes in the information contained in an application for registration.

History: **En. Sec. 5, Ch. 97, L. 1969; amd. Sec. 335, Ch. 350, L. 1974; R.C.M. 1947, 67-2121(3).**

76-4-1233. Public offering statement. (1) A public offering statement shall disclose fully and accurately the physical characteristics of the subdivided lands offered and shall make known to prospective purchasers all unusual and material circumstances or features affecting the subdivided lands.

(2) The proposed public offering statement submitted to the department shall be in a form prescribed by the board's rules and shall include the following:

(a) the name and principal address of the subdivider;

(b) a general description of the subdivided lands stating the total number of lots, parcels, units, or interests in the offering;

(c) the significant terms of any encumbrances, easements, liens, and restrictions, including zoning and other regulations affecting the subdivided lands and each unit or lot, and a statement of all existing taxes and existing or proposed special taxes or assessments which affect the subdivided lands;

(d) a statement of the use for which the property is offered;

(e) information concerning improvements, including streets, water supply, levees, drainage control systems, irrigation systems, sewage disposal facilities, and customary utilities, and the estimated cost, date of completion, and responsibility for construction and maintenance of existing and proposed improvements which are referred to in connection with the offering or disposition of any interest in subdivided lands;

(f) additional information required by the board to assure full and fair disclosure to prospective purchasers.

History: **En. Sec. 6, Ch. 97, L. 1969; amd. Sec. 336, Ch. 350, L. 1974; R.C.M. 1947, 67-2122(1).**

76-4-1234. Regulation of advertising. (1) The public offering statement shall not be used for any promotional purposes before registration of the subdivided lands and afterwards only if it is used in its entirety. No portion of the public offering statement may be underscored, italicized, or printed in larger or heavier or different color type than the remainder of the statement unless the board requires it.

(2) No person may advertise or represent that the board approves or recommends the subdivided lands or disposition thereof.

(3) The board by rule or order, after reasonable notice and hearing, may require the filing of advertising material relating to subdivided lands prior to its distribution.

History: **En. Secs. 6, 10, Ch. 97, L. 1969; amd. Secs. 336, 340, Ch. 350, L. 1974; R.C.M. 1947, 67-2122(2), 67-2126(2).**

76-4-1235. Changes in public offering statement. (1) The board may require the subdivider to alter or amend the proposed public offering statement in order to assure full and fair disclosure to prospective purchasers.

(2) No change in the substance of the promotional plan or plan of disposition or development of the subdivision may be made after registration without notifying the board and without making appropriate amendment of the public offering statement.

(3) A public offering statement is not current unless all amendments are incorporated.

History: En. Sec. 6, Ch. 97, L. 1969; amd. Sec. 336, Ch. 350, L. 1974; R.C.M. 1947, 67-2122(3).

76-4-1236. Examination of application. On receipt of an application for registration in proper form by the department, the board shall forthwith initiate an examination to determine that:

(1) the subdivider can convey or cause to be conveyed the interest in subdivided lands offered for disposition if the purchaser complies with the terms of the offer and, when appropriate, that release clauses, conveyances in trust, or other safeguards have been provided;

(2) there is reasonable assurance that all proposed improvements will be completed as represented;

(3) the advertising material and the general promotional plan are not false or misleading and comply with the standards prescribed by the board in its rules and afford full and fair disclosure;

(4) the subdivider has not or, if a corporation, its officers, directors, and principals have not been convicted of a crime involving land dispositions or any aspect of the land sales business in this state, the United States, or any other state or foreign country within the past 10 years and have not been subject to any injunction or administrative order entered by any authority within the past 10 years restraining a false or misleading promotional plan involving land dispositions;

(5) the public offering statement requirements of this part have been satisfied.

History: En. Sec. 7, Ch. 97, L. 1969; amd. Sec. 337, Ch. 350, L. 1974; R.C.M. 1947, 67-2123.

76-4-1237. Notice of filing. On receipt of the application for registration in proper form, the department shall issue a notice of filing to the applicant.

History: En. Sec. 8, Ch. 97, L. 1969; amd. Sec. 1, Ch. 110, L. 1974; amd. Sec. 338, Ch. 350, L. 1974; R.C.M. 1947, 67-2124(part).

76-4-1238. Processing of application — registration of land. (1) Within 90 days from the date of the notice of filing, the board shall enter an order registering the subdivided lands or rejecting the registration. If no order of rejection is entered within 90 days from the date of notice of filing, the land shall be considered registered unless the applicant has consented in writing to a delay.

(2) If the board affirmatively determines upon inquiry and examination that the requirements of 76-4-1236 have been met, it shall enter an order registering the subdivided lands and shall designate the form of the public offering statement.

(3) (a) If the board determines upon inquiry and examination that any of the requirements of 76-4-1236 have not been met, it shall notify the applicant that the application for registration must be corrected in the particulars

specified within 10 days. If the requirements are not met within the time allowed, the board shall enter an order rejecting the registration, which shall include the findings of fact upon which the order is based.

(b) The order rejecting the registration shall not become effective for 20 days, during which time the applicant may petition for reconsideration and is entitled to a hearing.

History: **En. Sec. 8, Ch. 97, L. 1969; amd. Sec. 1, Ch. 110, L. 1974; amd. Sec. 338, Ch. 350, L. 1974; R.C.M. 1947, 67-2124(part).**

76-4-1239. Bonding requirements. No subdivided lands may be registered or considered registered until the subdivider has filed a bond with the department, executed by a surety company authorized to do business in this state, on a form approved by the board and in such amount as the board shall deem necessary to protect purchasers from damages arising out of violation of any provision of Montana law or any rule promulgated in furtherance thereof, when the volume of business of the subdivider and other related factors are taken into consideration, but in no event less than $50,000.

History: **En. Sec. 8, Ch. 97, L. 1969; amd. Sec. 1, Ch. 110, L. 1974; amd. Sec. 338, Ch. 350, L. 1974; R.C.M. 1947, 67-2124(4).**

76-4-1240. Annual report. (1) Within 30 days after each annual anniversary of an order registering subdivided lands, the subdivider shall file a report with the department in the form prescribed by the rules of the board. The report shall reflect any material changes in information contained in the original application for registration.

(2) The board may permit the filing of annual reports within 30 days after the anniversary date of the consolidated registration instead of the anniversary date of the original registration.

History: **En. Sec. 9, Ch. 97, L. 1969; amd. Sec. 339, Ch. 350, L. 1974; R.C.M. 1947, 67-2125.**

76-4-1241. Cease and desist orders. The board may issue an order requiring a person to cease and desist from an unlawful practice and to take such affirmative action as in the judgment of the board will carry out the purposes of this part if the board determines after notice and hearing that the person has:

(1) violated any provision of this part;

(2) directly or through an agent or employee knowingly engaged in any false, deceptive, or misleading advertising, promotional, or sales methods to offer or dispose of an interest in subdivided lands;

(3) made any substantial change in the plan of disposition and development of the subdivided lands subsequent to the order of registration without obtaining prior written approval from the board;

(4) disposed of any subdivided lands which have not been registered with the board; or

(5) violated any lawful order or rule of the board.

History: **En. Sec. 12, Ch. 97, L. 1969; amd. Sec. 342, Ch. 350, L. 1974; R.C.M. 1947, 67-2128(1).**

76-4-1242. Temporary cease and desist order. If the board makes a finding of fact in writing that the public interest will be irreparably harmed by delay in issuing an order, it may issue a temporary cease and desist order. Prior to issuing the temporary cease and desist order, the board whenever possible by telephone or otherwise shall give notice of the proposal to issue a temporary cease and desist order to the person subject to the order. Every temporary cease and desist order shall include in its terms a provision that upon request a hearing will be held within 20 days to determine whether or not it becomes permanent.

History: **En. Sec. 12, Ch. 97, L. 1969; amd. Sec. 342, Ch. 350, L. 1974; R.C.M. 1947, 67-2128(2).**

76-4-1243. Revocation of registration. (1) A registration may be revoked after notice and hearing upon a written finding of fact that the subdivider has:

(a) failed to comply with the terms of a cease and desist order;

(b) been convicted in any court subsequent to the filing of the application for registration of a crime involving fraud, deceptive practices, false pretenses, misrepresentation, false advertising, or dishonest dealing in real estate transactions;

(c) disposed of, concealed, or diverted any funds or assets of any person so as to defeat the rights of subdivision purchasers;

(d) failed to faithfully perform any stipulation or agreement made with the board as an inducement to grant any registration, to reinstate any registration, or to approve any promotional plan or public offering statement; or

(e) made intentional misrepresentations or concealed material facts in an application for registration.

(2) Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings.

(3) If the board finds after notice and hearing that the subdivider has been guilty of a violation for which revocation could be ordered, it may issue a cease and desist order instead.

History: **En. Sec. 13, Ch. 97, L. 1969; amd. Sec. 343, Ch. 350, L. 1974; amd. Sec. 55, Ch. 359, L. 1977; R.C.M. 1947, 67-2129.**

76-4-1244. Injunctive relief for violations. If it appears that a person has engaged or is about to engage in an act or practice constituting a violation of a provision of this part or a rule or order hereunder, the board, with or without prior administrative proceedings, may bring an action in any district court of this state to enjoin the acts or practices and to enforce compliance with this part or any rule or order hereunder. Upon proper showing, injunctive relief or temporary restraining orders shall be granted, and a receiver or conservator may be appointed. The board is not required to post a bond in any court proceedings.

History: **En. Sec. 10, Ch. 97, L. 1969; amd. Sec. 340, Ch. 350, L. 1974; R.C.M. 1947, 67-2126(3).**

76-4-1245. Penalties. Any person who violates any provision of this part or who willfully violates any rule adopted under it or any person who willfully in an application for registration makes any untrue statement of a material fact or omits to state a material fact may be fined not less than $1,000 or more than $5,000 or may be imprisoned for not more than 2 years, or both.

History: **En. Sec. 15, Ch. 97, L. 1969; R.C.M. 1947, 67-2131; amd. Sec. 14, Ch. 266, L. 1979.**

76-4-1246. Extradition proceedings. In the proceedings for extradition of a person charged with a crime under this part, it need not be shown that the person whose surrender is demanded has fled from justice or at the time of the commission of the crime was in the demanding or other state.

History: En. Sec. 18, Ch. 97, L. 1969; R.C.M. 1947, 67-2134.

76-4-1247. Civil remedies. (1) Any person who disposes of subdivided lands in violation of 76-4-1226, who in disposing of subdivided lands makes an untrue statement of a material fact, or who in disposing of subdivided lands omits a material fact required to be stated in a registration statement or public offering statement or necessary to make the statements made not misleading is liable as provided in this section to the purchaser unless, in the case of an untruth or omission, it is proved that the purchaser knew of the untruth or omission or that the person offering or disposing of subdivided lands did not know and in the exercise of reasonable care could not have known of the untruth or omission or that the purchaser did not rely on the untruth or omission.

(2) In addition to any other remedies, the purchaser, under subsection (1), may recover the consideration paid for the lot, parcel, unit, or interest in subdivided lands, together with interest at the rate of 6% per year from the date of payment, property taxes paid, costs, and reasonable attorneys' fees less the amount of any income received from the subdivided lands, upon tender of appropriate instruments of reconveyance. If the purchaser no longer owns the lot, parcel, unit, or interest in subdivided lands, he may recover the amount that would be recoverable upon a tender of a reconveyance less the value of the land when disposed of and less interest at the rate of 6% per year on that amount from the date of disposition.

(3) A tender of reconveyance may be made at any time before the entry of judgment.

History: En. Sec. 16, Ch. 97, L. 1969; R.C.M. 1947, 67-2132(a), (b), (e).

76-4-1248. Details of civil liability. (1) (a) Every person who directly or indirectly controls a subdivider liable under 76-4-1247(1), every general partner, officer, or director of a subdivider, every person occupying a similar status or performing a similar function, every employee of the subdivider who materially aids in the disposition, and every agent who materially aids in the disposition is also liable jointly and severally with and to the same extent as the subdivider unless the person otherwise liable sustains the burden of proof that he did not know and in the exercise of reasonable care could not have known of the existence of the facts by reason of which the liability is alleged to exist.

(b) There is a right to contribution as in cases of contract among persons so liable.

(2) Every person whose occupation gives authority to a statement which with his consent has been used in an application for registration or public offering statement, if he is not otherwise associated with the subdivision and development plan in a material way, is liable only for false statements and omissions in his statement and only if he fails to prove that he did not know and in the exercise of the reasonable care of a man in his occupation could not have known of the existence of the facts by reason of which the liability is alleged to exist.

History: En. Sec. 16, Ch. 97, L. 1969; R.C.M. 1947, 67-2132(c), (d).

76-4-1249. Waiver of rights under part void. Any stipulation or provision purporting to bind any person acquiring subdivided lands to waive compliance with this part or any rule or order under it is void.

History: En. Sec. 16, Ch. 97, L. 1969; R.C.M. 1947, 67-2132(f).

76-4-1250. Jurisdiction. Dispositions of subdivided lands are subject to this part, and any district court of this state has jurisdiction in claims arising under this part if:

(1) the subdivider's principal office is located in this state; or

(2) any offer or disposition of subdivided lands is made in this state, whether or not the offeror or offeree is then present in this state, if the offer originates within this state or is directed by the offeror to a person or place in this state and received by the person or at the place to which it is directed.

History: En. Sec. 17, Ch. 97, L. 1969; R.C.M. 1947, 67-2133.

76-4-1251. Service of process. (1) In addition to the methods of service of process provided for in the Montana Rules of Civil Procedure, service may be made upon any person for any cause arising under the provisions of this part by delivering a copy of the process to the office of the department, but it is not effective unless:

(a) the plaintiff (which may be the board in a proceeding instituted by it) immediately sends a copy of the process and of the pleading by registered or certified mail to the defendant or respondent at his last known address; and

(b) the plaintiff's affidavit of compliance with this section is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

(2) If any person, including any nonresident of this state, engages in conduct prohibited by this part or any rule or order hereunder and has not filed a consent to service of process and personal jurisdiction over him cannot otherwise be obtained in this state, that conduct authorizes the department to receive service of process in any noncriminal proceeding against him or his successor which grows out of the conduct and which is brought under this part or any rule or order hereunder with the same force and validity as if served on him personally. Notice shall be given as provided in subsection (1).

History: En. Sec. 19, Ch. 97, L. 1969; amd. Sec. 344, Ch. 350, L. 1974; R.C.M. 1947, 67-2135.

CHAPTER 5

FLOODPLAIN AND FLOODWAY MANAGEMENT

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Part 1

General Provisions

76-5-101. Findings. The people of the state of Montana find that:

(1) recurrent flooding of a portion of the state's land resources causes loss of life, damage to property, disruption of commerce and governmental services, and unsanitary conditions; all of which are detrimental to the health,

safety, welfare, and property of the occupants of flooded lands and the people of this state; and

(2) the public interest necessitates management and regulation of flood-prone lands and waters in a manner consistent with sound land and water use management practices which will prevent and alleviate flooding threats to life and health and reduce private and public economic losses.

History: **En. Sec. 1, Ch. 393, L. 1971; R.C.M. 1947, 89-3501.**

76-5-102. Policy and purposes. (1) The policy and purposes of parts 1 through 4 of this chapter are to:

(a) guide development of the floodway areas of this state consistent with the enumerated findings;

(b) recognize the right and need of watercourses to periodically carry more than the normal flow of water;

(c) provide state coordination and technical assistance to local units in management of floodway areas;

(d) coordinate federal, state, and local management activities for floodway areas;

(e) encourage local governmental units to manage flood-prone lands, including the adoption, enforcement, and administration of land use regulations; and

(f) provide the department of natural resources and conservation with authority necessary to carry out a comprehensive floodway management program for the state.

(2) Specifically, it is the purpose of parts 1 through 4 to:

(a) restrict or prohibit uses which are dangerous to health or safety of property in times of flood or cause increased flood heights or velocities;

(b) require that uses vulnerable to floods, including public facilities which serve such uses, be provided with flood protection at the time of initial construction;

(c) develop and provide information to identify lands which are unsuited for certain development purposes because of flood hazard;

(d) distinguish between the land use regulations applied to the designated floodway and those applied to that portion of the designated floodplain not contained within the designated floodway;

(e) apply more restrictive land use regulations within the designated floodway;

(f) ensure that regulations and minimum standards adopted under parts 1 through 4, insofar as possible, balance the greatest public good with the least private injury.

History: **En. Sec. 2, Ch. 393, L. 1971; amd. Sec. 194, Ch. 253, L. 1974; amd. Sec. 1, Ch. 271, L. 1974; R.C.M. 1947, 89-3502.**

76-5-103. Definitions. As used in parts 1 through 4 of this chapter, unless the context otherwise requires, the following definitions apply:

(1) "Artificial obstruction" means any obstruction which is not a natural obstruction and includes any dam, wall, riprap, embankment, levee, dike, pile, abutment, projection, revetment, excavation, channel rectification,

bridge, conduit, culvert, building, refuse, automobile body, fill, or other analogous structure or matter in, along, across, or projecting into any floodplain or floodway which may impede, retard, or change the direction of the flow of water, either in itself or by catching or collecting debris carried by the water, or that is placed where the natural flow of the water would carry the same downstream to the damage or detriment of either life or property.

(2) "Board" means the board of natural resources and conservation provided for in 2-15-3302.

(3) "Channel" means the geographical area within either the natural or artificial banks of a watercourse or drainway.

(4) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(5) "Designated floodplain" means a floodplain whose limits have been designated and established by order of the board.

(6) "Designated floodway" means a floodway whose limits have been designated and established by order of the board.

(7) "Drainway" means any depression 2 feet or more below the surrounding land serving to give direction to a current of water less than 9 months of the year and having a bed and well-defined banks.

(8) "Establish" means construct, place, insert, or excavate.

(9) "Flood" means the water of any watercourse or drainway which is above the bank or outside the channel and banks of such watercourse or drainway.

(10) "Flood of 100-year frequency" means a flood magnitude expected to recur on the average of once every 100 years or a flood magnitude which has a 1% chance of occurring in any given year.

(11) "Floodplain" means the area adjoining the watercourse or drainway which would be covered by the floodwater of a flood of 100-year frequency, except for sheetflood areas that receive less than 1 foot of water per occurrence and are considered "zone B" by the federal emergency management agency.

(12) "Floodway" means the channel of a watercourse or drainway and those portions of the floodplain adjoining the channel which are reasonably required to carry and discharge the floodwater of any watercourse or drainway.

(13) "Natural obstruction" means any rock, tree, gravel, or analogous natural matter that is an obstruction and has been located within the floodplain or floodway by a nonhuman cause.

(14) "Owner" means any person who has dominion over, control of, or title to an obstruction.

(15) "Political subdivision" means any incorporated city or town or any county organized and having authority to adopt and enforce land use regulations.

(16) "Responsible political subdivision" means a political subdivision that has enacted land use regulations in accordance with parts 1 through 4.

(17) "Watercourse" means any depression 2 feet or more below the surrounding land serving to give direction to a current of water at least 9 months of the year and having a bed and well-defined banks; provided that

it shall, upon order of the board, also include any particular depression which would not otherwise be within the definition of watercourse.

History: **En. Sec. 3, Ch. 393, L. 1971; amd. Sec. 1, Ch. 294, L. 1973; amd. Sec. 195, Ch. 253, L. 1974; amd. Sec. 2, Ch. 271, L. 1974; R.C.M. 1947, 89-3503(part); amd. Sec. 1, Ch. 428, L. 1981.**

Compiler's Comments

1981 Amendment: Added the exception for sheetflood areas which are considered zone B to the definition of floodplain in (11).

Effective Date: Section 2, Ch. 428, L. 1981, provided: "This act is effective on passage and approval." Approved April 18, 1981.

76-5-104. Presumption that depression is watercourse. In the event of doubt as to whether a depression is a watercourse or drainway, it shall be presumed to be a watercourse.

History: **En. Sec. 3, Ch. 393, L. 1971; amd. Sec. 1, Ch. 294, L. 1973; amd. Sec. 195, Ch. 253, L. 1974; amd. Sec. 2, Ch. 271, L. 1974; R.C.M. 1947, 89-3503(part).**

76-5-105. Authority to enter and investigate lands or waters. The department or the responsible political subdivision may make reasonable entry upon any lands and waters in the state for the purpose of making an investigation, survey, removal, or repair contemplated by parts 1 through 4 of this chapter. An investigation of a natural or artificial obstruction or nonconforming use shall be made by the department either on its own initiative, on the written request of three titleholders of land abutting the watercourse or drainway involved, or on the written request of a political subdivision.

History: **En. Sec. 9, Ch. 393, L. 1971; amd. Sec. 201, Ch. 253, L. 1974; amd. Sec. 8, Ch. 271, L. 1974; R.C.M. 1947, 89-3509.**

76-5-106. Exemption for small drainage area. Parts 1 through 4 of this chapter shall not extend to any obstruction in the floodplain or floodway of a watercourse or drainway where the drainage area above the same, either within or without the state, is less than 25 square miles in extent unless a particular watercourse or drainway is expressly declared to be within the coverage of parts 1 through 4 by order of the board.

History: **En. Sec. 10, Ch. 393, L. 1971; amd. Sec. 9, Ch. 271, L. 1974; R.C.M. 1947, 89-3510.**

76-5-107. Federal supremacy. Parts 1 through 4 do not interfere with the right of the United States to regulate interstate commerce or the navigable waters of the United States.

History: **En. Sec. 14, Ch. 393, L. 1971; amd. Sec. 204, Ch. 253, L. 1974; amd. Sec. 11, Ch. 271, L. 1974; amd. Sec. 4, Ch. 73, L. 1977; R.C.M. 1947, 89-3514(part).**

76-5-108. Permit construed as added requirement. The granting of a permit under parts 1 through 4 of this chapter does not affect any other type of approval required by any other statute or ordinance of the state, of any political subdivision, or of the United States but is an added requirement.

History: **En. Sec. 14, Ch. 393, L. 1971; amd. Sec. 204, Ch. 253, L. 1974; amd. Sec. 11, Ch. 271, L. 1974; amd. Sec. 4, Ch. 73, L. 1977; R.C.M. 1947, 89-3514(part).**

76-5-109. Other legal remedies preserved — immunity. (1) The grant or denial of a permit does not have an effect on a remedy of a person at law or in equity.

(2) Where it is shown that there is a wrongful failure to comply with parts 1 through 4 of this chapter, there is a rebuttable presumption that the

obstruction was the proximate cause of the flooding of the land of a person bringing suit.

(3) The use of any one of the remedies or powers given to the board or the department in parts 1 through 4 is not a bar to the exercise of any other remedy or power given by parts 1 through 4.

(4) An action for damages sustained because of injury caused by an obstruction for which a permit has been granted under parts 1 through 4 may not be brought against the state, the board, a member of the board, or the department.

History: (1), (2), (4)En. Sec. 14, Ch. 393, L. 1971; amd. Sec. 204, Ch. 253, L. 1974; amd. Sec. 11, Ch. 271, L. 1974; amd. Sec. 4, Ch. 73, L. 1977; Sec. 89-3514, R.C.M. 1947; (3)En. Sec. 15, Ch. 393, L. 1971; amd. Sec. 205, Ch. 253, L. 1974; Sec. 89-3515, R.C.M. 1947; R.C.M. 1947, 89-3514(part), 89-3515.

76-5-110. Penalties for violation. Any person who violates 76-5-401 through 76-5-404 shall be guilty of a misdemeanor and shall upon conviction thereof be fined not more than $100 or be imprisoned in the county jail for not more than 10 days or be both so fined and imprisoned. Each day's continuance of a violation shall be deemed a separate and distinct offense.

History: En. Sec. 13, Ch. 393, L. 1971; R.C.M. 1947, 89-3513.

Part 2

Role of State Agencies

76-5-201. Program for delineation of floodplains and floodways. (1) The department shall initiate a comprehensive program for the delineation of designated floodplains and designated floodways for every watercourse and drainway in the state. It shall make a study relating to the acquiring of flood data and may enter into arrangements with the United States geological survey, the United States army corps of engineers, or any other state or federal agency for such acquisition.

(2) Before the board establishes by order a designated floodplain or a designated floodway, the department shall consult with the affected political subdivisions. Consultation shall include but not be limited to the following:

(a) specifically requesting that the political subdivisions submit pertinent data concerning flood hazards, including flooding experiences, plans to avoid potential hazards, estimates of economic impacts of flooding on the community, both historical and prospective, and such other data as considered appropriate;

(b) notifying local officials, including members of the county commission, city council, and planning board, of the progress of surveys, studies, and investigations and of proposed findings, along with information concerning data and methods employed in reaching such conclusions; and

(c) encouraging local dissemination of information concerning surveys, studies, and investigations so that interested persons will have an opportunity to bring relevant data to the attention of the department.

History: En. Sec. 4, Ch. 393, L. 1971; amd. Sec. 2, Ch. 294, L. 1973; amd. Sec. 196, Ch. 253, L. 1974; amd. Sec. 3, Ch. 271, L. 1974; amd. Sec. 1, Ch. 262, L. 1977; R.C.M. 1947, 89-3504(1).

76-5-202. Designation of floodplains and floodways. (1) When sufficient data has been acquired by the department, the board shall establish, by order after a public hearing, the designated floodplain within which a political subdivision may establish land use regulation.

(2) When sufficient data has been acquired, the board shall establish, by order after a public hearing, the designated floodway within which a political subdivision may establish land use regulation.

(3) These designations shall be based upon reasonable hydrological certainty.

(4) The department shall record all designated floodplains or designated floodways established by the board in the office of the county clerk and recorder of each county in which those floodplains or floodways are found.

History: En. Sec. 4, Ch. 393, L. 1971; amd. Sec. 2, Ch. 294, L. 1973; amd. Sec. 196, Ch. 253, L. 1974; amd. Sec. 3, Ch. 271, L. 1974; amd. Sec. 1, Ch. 262, L. 1977; R.C.M. 1947, 89-3504(part).

76-5-203. Alteration of floodplains or floodways. The board may alter the floodplains or floodways at any later time, by order after a public hearing, if a reevaluation of the then available flood data warrants it.

History: En. Sec. 4, Ch. 393, L. 1971; amd. Sec. 2, Ch. 294, L. 1973; amd. Sec. 196, Ch. 253, L. 1974; amd. Sec. 3, Ch. 271, L. 1974; amd. Sec. 1, Ch. 262, L. 1977; R.C.M. 1947, 89-3504(part).

76-5-204. What constitutes notice. Notice of a hearing or order of the board establishing or altering the floodplains or floodways shall be given by publishing the notice once each week for 3 consecutive weeks in a legal newspaper published or of general circulation in the area involved, the last publication of which shall be not less than 10 days prior to the date set for the hearing or the effective date of the order.

History: En. Sec. 4, Ch. 393, L. 1971; amd. Sec. 2, Ch. 294, L. 1973; amd. Sec. 196, Ch. 253, L. 1974; amd. Sec. 3, Ch. 271, L. 1974; amd. Sec. 1, Ch. 262, L. 1977; R.C.M. 1947, 89-3504(part).

76-5-205. Furnishing of material to local governments. (1) When the designated floodplain or the designated floodway has been established, the department shall furnish this data to officials of the political subdivision having jurisdiction over those areas, together with a map outlining the areas involved, a copy of parts 1 through 4 of this chapter, adopted rules of the board, and suggested minimum standards adopted by the board.

(2) These standards and rules shall reflect gradations in flood hazard based on criteria as outlined in 76-5-406. In adopting these standards and rules, the board shall consider local input from the affected political subdivisions.

History: En. Sec. 4, Ch. 393, L. 1971; amd. Sec. 2, Ch. 294, L. 1973; amd. Sec. 196, Ch. 253, L. 1974; amd. Sec. 3, Ch. 271, L. 1974; amd. Sec. 1, Ch. 262, L. 1977; R.C.M. 1947, 89-3504(part).

76-5-206. Powers and duties of department relative to obstructions. (1) Where an obstruction to a designated floodway established under 76-5-202 through 76-5-205 has been created by fallen trees, silt, debris, wreckage, unanchored automobile bodies, and like matter, the department may, in its discretion, remove the obstruction, in which case the cost of removal shall be borne by the department.

(2) Where, after investigation, notice, and hearing, an order has been issued by the board to the owner of an obstruction not exempt under 76-5-401 through 76-5-404 for its removal or repair and the order is not complied with within such reasonable time as may be prescribed or if the owner cannot be found or determined, the department may make or cause the removal or repairs to be made, the cost of which shall be borne by the owner and shall be recoverable in the same manner as debts are now recoverable by law.

History: En. Sec. 8, Ch. 393, L. 1971; amd. Sec. 5, Ch. 294, L. 1973; amd. Sec. 200, Ch. 253, L. 974; amd. Sec. 7, Ch. 271, L. 1974; R.C.M. 1947, 89-3508.

76-5-207. Floodway obstruction removal fund. The state treasurer shall establish the floodway obstruction removal fund and credit to the fund for the removal of obstructions as provided in 76-5-206(1) such money specifically appropriated by the legislature. The department may allocate money from the floodway obstruction removal fund for purposes provided in 76-5-206(1).

History: En. Sec. 12, Ch. 393, L. 1971; amd. Sec. 203, Ch. 253, L. 1974; R.C.M. 1947, 89-3512.

76-5-208. Orders and rules. (1) The board may adopt such orders and rules as are necessary to implement parts 1 through 4 of this chapter. All orders and rules adopted by the board shall be on file at the offices of the department and in the office of the county clerk and recorder of each county affected by the order or rule.

(2) If an order is issued to the owner of an artificial obstruction or nonconforming use not exempt under 76-5-401 through 76-5-404 for its removal or repair, the order shall not become effective less than 10 days after a hearing is held relating to the order.

(3) In addition to any requirement imposed by 76-5-202 through 76-5-205, where an order is issued which affects with particularity the land adjacent to a watercourse or drainway, notice of the contents of the order and of any required hearing shall be mailed by the department to the titleholder of the land not less than 10 days before the effective date of the order or, if there is a required hearing, to the titleholder of the land and to the owner of the artificial obstruction or nonconforming use not less than 10 days before the date of the hearing. However, the notice need not be given to the owner of the artificial obstruction or nonconforming use for an order issued pursuant to 76-5-206(2) if the owner cannot be found or determined.

History: En. Sec. 11, Ch. 393, L. 1971; amd. Sec. 202, Ch. 253, L. 1974; amd. Sec. 10, Ch. 271, L. 1974; R.C.M. 1947, 89-3511(part).

76-5-209. Appeal from board order. (1) A person aggrieved by any order of the board issued under parts 1 through 4 of this chapter may appeal from the order to a court of competent jurisdiction within 30 days after its effective date. Service of notice of the appeal shall be made upon the department.

(2) If an appeal is taken, enforcement of the order shall be stayed pending the outcome of the appeal.

History: En. Sec. 11, Ch. 393, L. 1971; amd. Sec. 202, Ch. 253, L. 1974; amd. Sec. 10, Ch. 271, L. 1974; R.C.M. 1947, 89-3511(part).

Part 3

Role of Local Government

76-5-301. Land use regulations. (1) Upon transmittal of the floodplain information to officials of a political subdivision, the political subdivision has 6 months from the date of transmittal to adopt land use regulations which meet or exceed the minimum standards of the board.

(2) If within the 6-month period the political subdivision has failed to adopt the land use regulations, the department shall enforce the minimum standards within the designated floodplain or the designated floodway as established by the board under 76-5-202 through 76-5-205, and no artificial obstruction or nonconforming use may be established by any person within the designated floodplain or the designated floodway unless specifically authorized by the board.

(3) A political subdivision which has failed to adopt land use regulations which meet or exceed the minimum standards of the board within the 6-month period may subsequently adopt such regulations, and if approved by the board, they shall be effective within the designated floodplain or floodway and administered and enforced by the political subdivision.

(4) When necessary for compliance with federal flood insurance requirements, the board may shorten the 6-month period upon notification to the political subdivision and publication of a notice thereof in a newspaper of general circulation in the affected area once a week for 3 consecutive weeks.

History: En. Sec. 4, Ch. 393, L. 1971; amd. Sec. 2, Ch. 294, L. 1973; amd. Sec. 196, Ch. 253, L. 1974; amd. Sec. 3, Ch. 271, L. 1974; amd. Sec. 1, Ch. 262, L. 1977; R.C.M. 1947, 89-3504(3) thru (5).

76-5-302. Substitution of local control for state permit system. (1) If a political subdivision enacts, in harmony with the purposes of parts 1 through 4 of this chapter, permit issuance ordinances, regulations, or resolutions and land use ordinances, regulations, or resolutions which meet or exceed the minimum standards of the board and if the administrative and enforcement procedures established for those ordinances, regulations, or resolutions are found acceptable by the board, no permit from the department is required.

(2) However, if the board determines that there is a failure by a political subdivision to comply with the intent, purposes, and provisions of parts 1 through 4 and the minimum standards adopted thereunder, the powers of the political subdivision may be suspended after hearing and the minimum standards adopted by the board shall be enforced by the department until such time as the board determines that the political subdivision will comply.

History: En. Sec. 14, Ch. 393, L. 1971; amd. Sec. 204, Ch. 253, L. 1974; amd. Sec. 11, Ch. 271, L. 1974; amd. Sec. 4, Ch. 73, L. 1977; R.C.M. 1947, 89-3514(part).

Part 4

Use of Floodplains and Floodways

76-5-401. Permissible open-space uses. The following open-space uses shall be permitted within the designated floodway to the extent that they are not prohibited by any other ordinance or statute and provided they do not require structures other than portable structures, fill, or permanent storage of materials or equipment:

(1) agricultural uses;

(2) industrial-commercial uses such as loading areas, parking areas, or emergency landing strips;

(3) private and public recreational uses such as golf courses, tennis courts, driving ranges, archery ranges, picnic grounds, boat launching ramps, swimming areas, parks, wildlife management and natural areas, game farms, fish hatcheries, shooting preserves, target ranges, trap and skeet ranges, hunting and fishing areas, or hiking and horseback riding trails;

(4) forestry, including processing of forest products with portable equipment;

(5) residential uses such as lawns, gardens, parking areas, and play areas;

(6) excavations subject to the issuance of a permit under 76-5-405 and 76-5-406.

History: En. Sec. 6, Ch. 393, L. 1971; amd. Sec. 4, Ch. 294, L. 1973; amd. Sec. 198, Ch. 253, L. 1974; amd. Sec. 5, Ch. 271, L. 1974; R.C.M. 1947, 89-3506(2).

76-5-402. Permissible uses within floodplain but outside of floodway. Permits shall be granted for the following uses within that portion of the floodplain not contained within the designated floodway to the extent that they are not prohibited by any other ordinance, regulation, or statute:

(1) any use permitted in the designated floodway;

(2) structures, including but not limited to residential, commercial, and industrial structures, provided that:

(a) such structures meet the minimum standards adopted by the board;

(b) residential structures are constructed on fill such that the lowest floor elevation (including basements) is 2 feet above the 100-year flood elevation;

(c) commercial and industrial structures are either constructed on fill as specified in subsection (b) or are adequately floodproofed up to an elevation no lower than 2 feet above the 100-year flood elevation. Such floodproofing shall be in accordance with the minimum standards adopted by the board.

History: En. Sec. 6, Ch. 393, L. 1971; amd. Sec. 4, Ch. 294, L. 1973; amd. Sec. 198, Ch. 253, L. 1974; amd. Sec. 5, Ch. 271, L. 1974; R.C.M. 1947, 89-3506(3).

76-5-403. Prohibited uses within floodway. The following nonconforming uses shall be prohibited within the designated floodway:

(1) a building for living purposes or place of assembly or permanent use by human beings;

(2) a structure or excavation that will cause water to be diverted from the established floodway, cause erosion, obstruct the natural flow of water, or reduce the carrying capacity of the floodway;

(3) the construction or permanent storage of an object subject to flotation or movement during flood level periods.

History: En. Sec. 6, Ch. 393, L. 1971; amd. Sec. 4, Ch. 294, L. 1973; amd. Sec. 198, Ch. 253, L. 1974; amd. Sec. 5, Ch. 271, L. 1974; R.C.M. 1947, 89-3506(4).

76-5-404. Artificial obstructions and nonconforming uses. (1) An artificial obstruction or nonconforming use in a designated floodplain or designated floodway enforced under 76-5-301 (1) and (2) and not exempt under subsections (2) or (3) of this section or 76-5-401 through 76-5-403 is a public nuisance unless a permit has been obtained for such artificial obstruction or nonconforming use from the department or the responsible political subdivision.

(2) It is unlawful for a person to establish an artificial obstruction or nonconforming use within a designated floodplain or a designated floodway without a permit from the department or the responsible political subdivision.

(3) (a) Parts 1 through 4 of this chapter do not affect any existing artificial obstruction or nonconforming use established in the designated floodplain or designated floodway before the land use regulations adopted by the political subdivision are effective or before the board has enforced a designated floodplain or a designated floodway under 76-5-301 (1) and (2).

(b) However, a person may not make nor may an owner allow alterations of an artificial obstruction or nonconforming use within a designated floodplain or a designated floodway whether the obstruction proposed for alteration was located in the floodplain or floodway before or after July 1, 1971, except upon express written approval of the department or the responsible political subdivision. Maintenance of an obstruction is not an alteration.

History: En. Secs. 5, 6, Ch. 393, L. 1971; amd. Secs. 3, 4, Ch. 294, L. 1973; amd. Secs. 197, 198, Ch. 253, L. 1974; amd. Secs. 4, 5, Ch. 271, L. 1974; R.C.M. 1947, 89-3505, 89-3506(1).

76-5-405. Variance for obstruction or nonconforming use. (1) The department or the responsible political subdivision may issue permits for the establishment or alteration of artificial obstructions and nonconforming uses which would otherwise violate 76-5-401 through 76-5-404. The application for the permit shall be submitted to the department or the responsible political subdivision and contain such information as the department requires, including complete maps, plans, profiles, and specifications of the obstruction or use and watercourse or drainway.

(2) Permits for obstructions or uses to be established in the designated floodplain or designated floodway of watercourses must be specifically approved or denied within a reasonable time by the department or the responsible political subdivision. Permits for obstructions or uses in the designated floodplains or designated floodways shall be conclusively deemed to have been granted 60 days after the receipt of the application by the department or the responsible political subdivision or after such time as the board or the responsible political subdivision shall specify, unless the department or the responsible political subdivision notifies the applicant that the permit is denied. The responsible political subdivision shall send to the department a copy of each permit granted pursuant to this section and 76-5-406.

(3) An application for a permit shall be accompanied by a nonrefundable application fee of $10 which the state treasurer shall credit to the floodway obstruction removal fund.

(4) The department or the responsible political subdivision may make a part of the permit any reasonable conditions it may consider advisable. In order for the permit to continue to remain in force, the obstruction or use must be maintained so as to comply with the conditions and specifications of the permit.

History: En. Sec. 7, Ch. 393, L. 1971; amd. Sec. 199, Ch. 253, L. 1974; amd. Sec. 6, Ch. 271, L. 1974; R.C.M. 1947, 89-3507(part).

76-5-406. Criteria to be considered in connection with variance request. In passing upon the application, the department or the responsible political subdivision shall consider in accordance with the minimum standards established by the board:

(1) the danger to life and property by water which may be backed up or diverted by the obstruction or use;

(2) the danger that the obstruction or use will be swept downstream to the injury of others;

(3) the availability of alternate locations;

(4) the construction or alteration of the obstruction or use in such a manner as to lessen the danger;

(5) the permanence of the obstruction or use;

(6) the anticipated development in the foreseeable future of the area which may be affected by the obstruction or use; and

(7) such other factors as are in harmony with the purpose of parts 1 through 4 of this chapter.

History: **En. Sec. 7, Ch. 393, L. 1971; amd. Sec. 199, Ch. 253, L. 1974; amd. Sec. 6, Ch. 271, L. 1974; R.C.M. 1947, 89-3507(part).**

Parts 5 through 10 reserved

Part 11

Water Conservation and Flood Control Projects

76-5-1101. Water conservation and flood control projects authorized. (1) Cities, towns, or counties, through their councils, boards of county commissioners, or other governing body, are hereby empowered, either individually or jointly, to engage or participate in the establishment of water conservation and flood control projects within the limits of such city, town, or county:

(a) for the protection or reclamation of property situated therein from floods or high waters and to protect property therein from the effects of floodwater; and

(b) for the conservation, development, storage, distribution, drainage, and utilization of water for purposes beneficial to the district.

(2) Purposes beneficial to the district include but are not limited to industrial and municipal water supply, recreation and wildlife, irrigation, streamflow stabilization, household and domestic use, and pollution abatement whenever the establishment of such a water conservation and flood control system shall, in the judgment of the city council, board of county commissioners, or other governing body, be conducive to public convenience and welfare.

History: **En. Sec. 1, Ch. 272, L. 1965; amd. Sec. 1, Ch. 284, L. 1967; R.C.M. 1947, 89-3301(part).**

76-5-1102. Types of projects. Such cities, towns, or counties in accordance with the provisions of this part, individually, jointly, or severally or in cooperation with the federal or state government or any department or agency thereof and with each other, may deepen, widen, straighten, alter, change, divert, or otherwise improve the watercourses within or without their limits by constructing levees, dikes, embankments, structures, impounding reservoirs, or conduits and improve, widen, and establish streets, alleys, and boulevards across and adjacent to the abandoned or new channel or conduit and provide for the payment of the cost and maintenance of such project or projects under the terms of this part.

History: **En. Sec. 1, Ch. 272, L. 1965; amd. Sec. 1, Ch. 284, L. 1967; R.C.M. 1947, 89-3301(part).**

76-5-1103. Water conservation and flood control activities declared public purpose. Such water conservation and flood control activities and their establishment, construction, operation, and maintenance as authorized by this part are declared to be for the protection of the tax base of the city, town, or county; for the protection of public roads, lands, and improvements; for the protection of the public health, sanitation, and safety; and for improvement of the general welfare.

History: **En. Sec. 2, Ch. 272, L. 1965; amd. Sec. 2, Ch. 284, L. 1967; R.C.M. 1947, 89-3302.**

76-5-1104. Construction of part. (1) This part and each section thereof shall be construed as granting additional power without limiting the power already existing in cities, towns, and counties.

(2) The provisions of this part and the methods of organization of water conservation and flood control projects are hereby declared to be an alternative method to any other method proposed by any law now in existence or hereafter enacted for the creation of such projects, and it is hereby declared that no provision hereof shall be amended or repealed by implication or otherwise as being in conflict with any existing law or future enactment unless specifically so declared by the legislature.

History: **(1)En. Sec. 13, Ch. 272, L. 1965; Sec. 89-3313, R.C.M. 1947; (2)En. Sec. 12, Ch. 284, L. 1967; Sec. 89-3314, R.C.M. 1947; R.C.M. 1947, 89-3313, 89-3314.**

76-5-1105. Division of work into parts. Whenever any city, town, or county has begun a water conservation or flood control system, or both, under this part, the council, board, or other governing body shall have the power to divide the work into parts, sections, or districts; to omit parts of said work; and to contract for any part or section separately and proceed therewith the same as if the entire work or improvements were contracted for, done, or made.

History: **En. Sec. 11, Ch. 272, L. 1965; amd. Sec. 11, Ch. 284, L. 1967; R.C.M. 1947, 89-3311.**

76-5-1106. Requirements to change project boundaries. The boundaries of a project once established shall not be extended without the vote of a majority of the electors residing in the area proposed to be annexed. Such electors are to be determined, and such election is to be held in accordance with the provisions of 76-5-1117.

History: **En. Sec. 1, Ch. 272, L. 1965; amd. Sec. 1, Ch. 284, L. 1967; R.C.M. 1947, 89-3301(part).**

76-5-1107. Direction and construction responsibility of state or federal government — local role. This part contemplates that the actual direction of the project and the doing of the work in connection therewith is assumed by either the state or the federal government and the city, town, or county provides and assumes the cost of necessary right-of-way over and above such contributions in that regard as the federal government may choose to make. Under such limitation, all appropriate portions of this part shall apply.

History: **En. Sec. 6, Ch. 272, L. 1965; amd. Sec. 5, Ch. 284, L. 1967; R.C.M. 1947, 89-3306.**

76-5-1108. Acquisition of property. (1) Cities, towns, and counties may acquire by gift, purchase, or condemnation and appropriation private property within the limits of the project, including the right to cross railroad right-of-way and property and highway right-of-way and property, so as not to impair the previous public use, as may be necessary to carry into effect the provisions of this part and to provide an outlet for the watercourses, either natural or artificial, which may be deepened, widened, straightened, altered, changed, diverted, or otherwise improved under the provisions of this part.

(2) All provisions of the laws of Montana relating to the condemnation of lands for public purposes shall apply to the provisions thereof insofar as applicable.

History: **En. Sec. 3, Ch. 272, L. 1965; amd. Sec. 3, Ch. 284, L. 1967; R.C.M. 1947, 89-3303.**

76-5-1109. Contracts for use of railroads and highways. A city, town, or county may contract with a railroad company or with the department of highways for the use of railroad or highway rights-of-way and embankments and other railroad or highway property which can be utilized by the city, town, or county for the purpose of water conservation or flood control or protection as part of its water conservation or flood control system, or both, for a period not exceeding 99 years.

History: **En. Sec. 10, Ch. 272, L. 1965; amd. Sec. 10, Ch. 284, L. 1967; amd. Sec. 207, Ch. 316, L. 1974; R.C.M. 1947, 89-3310.**

76-5-1110. Cooperation with governmental, public, and private agencies. (1) Cities, towns, and counties may in accordance with the provisions of this part:

(a) accept funds and property or other assistance, financial or otherwise, from federal, state, and other public or private sources for the purpose of aiding the construction and maintenance of water conservation and flood control projects; and

(b) cooperate and contract with the state or federal government or any department or agency thereof in furnishing assurances and meeting local cooperation requirements of any project involving control, conservation, and use of water.

(2) Cities, towns, and counties may also enter into agreement with the federal government to maintain levees, dikes, or other construction and to do all other acts required by the federal government in maintaining the work when completed.

History: **En. Secs. 4, 7, Ch. 272, L. 1965; amd. Secs. 4, 6, Ch. 284, L. 1967; R.C.M. 1947, 89-3304, 89-3307(part).**

76-5-1111. Apportionment of costs. (1) The cost of all right-of-way acquired by purchase or condemnation together with any other property rights which may be required in furtherance of such projects, may be borne by the city, town, or county.

(2) The work of actual construction and the cost thereof may be borne by the federal government.

History: **En. Sec. 5, Ch. 272, L. 1965; R.C.M. 1947, 89-3305.**

76-5-1112. Sources of funds for cost of acquiring right-of-way and other costs. (1) The council, board, or governing body shall have power to allocate a portion of the street or road fund, as the case may be, for the purpose of acquiring right-of-way or the operation and maintenance of completed projects.

(2) Cities, towns, and counties in furtherance of such water conservation and flood control projects may accept contributions to enable them to pay for necessary right-of-way.

(3) The council, board of county commissioners, or other governing body shall also have the authority to receive and accept appropriations and contributions from any source of either money or property or other things of value to be held, used, and applied for the purposes provided in this part.

History: **(1)En. Sec. 8, Ch. 272, L. 1965; amd. Sec. 7, Ch. 284, L. 1967; Sec. 89-3308, R.C.M. 1947; (2)En. Sec. 7, Ch. 272, L. 1965; amd. Sec. 6, Ch. 284, L. 1967; Sec. 89-3307, R.C.M. 1947; (3)En. Sec. 9, Ch. 284, L. 1967; Sec. 89-3309.1, R.C.M. 1947; R.C.M. 1947, 89-3307(part), 89-3308, 89-3309.1(part).**

76-5-1113. Special assessments for operation and maintenance authorized. (1) Any city, town, or county that shall establish a water conservation or flood control system, or both, pursuant to this part may for the purpose of providing funds for the operation and maintenance thereof levy an annual special assessment against all real property in the area benefiting from such system.

(2) Such special assessments for the operation and maintenance of any system authorized by this part shall be levied as are other special improvement levies as required by law.

History: **En. Sec. 9, Ch. 272, L. 1965; amd. Sec. 8, Ch. 284, L. 1967; R.C.M. 1947, 89-3309(part).**

76-5-1114. Determination of assessment. (1) The special assessment shall be:

(a) levied against each lot or parcel of land in the benefited area for that portion of the money required which its area bears to the total area of all of the lands to be assessed; or

(b) at the option of the governing body of the city, town, or county, as the case may be, based upon the taxable valuation, as stated in the last completed county assessment roll, of the lots or parcels of land, exclusive of improvements thereon, within said benefited area; in which case each lot or parcel of land to be assessed shall be assessed with that part of the amount of money required which its taxable valuation bears to the total taxable valuation of all of the lands to be assessed.

(2) However, where the benefited area lies in more than one county or lies both within a county and also a city or town, the same method of assessment shall be used for each governing body.

History: **En. Sec. 9, Ch. 272, L. 1965; amd. Sec. 8, Ch. 284, L. 1967; R.C.M. 1947, 89-3309(part).**

76-5-1115. Fees and charges authorized. Cities, towns, and counties may for the purpose of providing funds for the operation and maintenance of completed projects fix, maintain, and collect fees, rents, tolls, and other charges for services rendered or facilities provided.

History: **En. Sec. 9, Ch. 284, L. 1967; R.C.M. 1947, 89-3309.1(part).**

76-5-1116. Determination of fees and charges. (1) In fixing such rate, fee, toll, or rent for water furnished for household use, domestic use, irrigation use, industrial use, and municipal use and for water used for streamflow stabilization, the governing body shall charge a fee sufficient to pay the proportionate share of the repairs, maintenance, and operating expenses as such use bears in economic value to the total economic value of the total use of said facilities of the project or projects. The economic value is to be determined by the governing body.

(2) For the benefits received by areas within the boundaries of the project or projects for flood prevention, flood control, and pollution abatement, the governing body shall determine a reasonable valuation or charge, which valuation or charge shall be certified by them to the county commissioners prior to the time general taxes are levied and assessed. It shall be the obligation of the county commissioners to levy a special assessment as provided for in 76-5-1113 and 76-5-1114 against such area or areas sufficient to provide revenues for the repairs, maintenance, and operating expenses of the project.

(3) For recreation use the governing body shall first determine the share of the costs of operation, repairs, and depreciation to be charged against such uses and from this figure shall subtract the estimated amount of fees and tolls collected for such uses. The deficiency, if any, shall be certified to the county commissioners in the same way as the charges for flood prevention, flood control, etc., and special assessments shall be levied by the county commissioners in the manner set out herein.

History: En. Sec. 9, Ch. 284, L. 1967; R.C.M. 1947, 89-3309.1(part).

76-5-1117. Bonds authorized — procedure. Cities, towns, and counties are authorized to contract indebtedness and to issue special improvement district or rural improvement district bonds to provide funds for the payment of the cost of improvements contemplated by this part by following the procedures established for the issuance of such bonds under the provisions of Title 7, chapter 12, part 42, as to cities and towns and Title 7, chapter 12, part 21, as to counties. Payment and security for the bonds shall be provided by following the following procedures:

(1) Tax assessments for the payment of the bonds shall be levied in accordance with Title 7, chapter 12, parts 41 and 42, or Title 7, chapter 12, part 21, as to cities and counties, respectively, or 76-5-1114(1).

(2) A revolving fund, to be pledged for the security of the bonds, must be established pursuant to the provisions of Title 7, chapter 12, part 42, as to cities and towns, and Title 7, chapter 12, part 21, as to counties, by the governing body authorizing the issuance of the bonds.

History: En. Sec. 12, Ch. 272, L. 1965; amd. Sec. 1, Ch. 239, L. 1971; R.C.M. 1947, 89-3312; amd. Sec. 15, Ch. 266, L. 1979; amd. Sec. 1, Ch. 209, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "or" for "and" following "Title 7, chapter 12, parts 41 and 42" and added "or 76-5-1114(1)" in (1).

Effective Date: Section 25, Ch. 266, L. 1979, provided: "This act is effective on passage and approval." Approved March 26, 1979.

CHAPTER 6

OPEN SPACES

Part 1 — General Provisions

Section

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76-6-103. Purposes.
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Part 1

General Provisions

76-6-101. Short title. This chapter may be cited as the "Open-Space Land and Voluntary Conservation Easement Act".

History: En. Sec. 1, Ch. 337, L. 1969; amd. Sec. 1, Ch. 489, L. 1975; R.C.M. 1947, 62-601.

76-6-102. Findings and policy. The legislature finds that:

(1) the rapid growth and spread of urban development are creating critical problems of service and finance for the state and local governments;

(2) the present and future rapid population growth in urban areas is creating severe problems of urban and suburban living;

(3) this population spread and its attendant development are disrupting and altering the remaining natural areas, biotic communities, and geological and geographical formations and thereby providing the potential for the destruction of scientific, educational, aesthetic, and ecological values;

(4) the present and future rapid population spread throughout the state of Montana into its open spaces is creating serious problems of lack of open space and overcrowding of the land;

(5) to lessen congestion and to preserve natural, ecological, geographical, and geological elements, the provision and preservation of open-space lands are necessary to secure park, recreational, historic, and scenic areas and to conserve the land, its biotic communities, its natural resources, and its geological and geographical elements in their natural state;

(6) the acquisition or designation of interests and rights in real property by certain qualifying private organizations and by public bodies to provide or preserve open-space land is essential to the solution of these problems, the accomplishment of these purposes, and the health and welfare of the citizens of the state;

(7) the exercise of authority to acquire or designate interests and rights in real property to provide or preserve open-space land and the expenditure of public funds for these purposes would be for a public purpose; and

(8) the statutory provision enabling certain qualifying private organizations to acquire interests and rights in real property to provide or preserve open-space land is in the public interest.

History: En. Sec. 2, Ch. 337, L. 1969; amd. Sec. 2, Ch. 489, L. 1975; R.C.M. 1947, 62-602(part).

76-6-103. Purposes. In accordance with the findings in 76-6-102, the legislature states that the purposes of this chapter are to:

(1) authorize and enable public bodies and certain qualifying private organizations voluntarily to provide for the preservation of native plants or animals, biotic communities, or geological or geographical formations of scientific, aesthetic, or educational interest;

(2) provide for the preservation of other significant open-space land anywhere in the state either in perpetuity or for a term of years; and

(3) encourage private participation in such a program by establishing the policy to be utilized in determining the property tax to be levied upon the real property which is subject to the provisions of this chapter.

History: En. Sec. 2, Ch. 337, L. 1969; amd. Sec. 2, Ch. 489, L. 1975; R.C.M. 1947, 62-602(part).

76-6-104. Definitions. The following terms whenever used or referred to in this chapter shall have the following meanings unless a different meaning is clearly indicated by the context:

(1) "Comprehensive planning" means planning for development and shall include:

(a) preparation of general physical plans with respect to the pattern and intensity of land use and the provision of public facilities, including transportation facilities, together with long-range fiscal plans for such development as a guide for long-range development;

(b) programming and financing plans for capital improvements;

(c) coordination of all related plans and planned activities at both the intragovernmental and intergovernmental levels; and

(d) preparation of regulatory and administrative measures in support of the foregoing.

(2) "Conservation easement" means an easement or restriction, running with the land and assignable, whereby an owner of land voluntarily relinquishes to the holder of such easement or restriction any or all rights to construct improvements upon the land or to substantially alter the natural character of the land or to permit the construction of improvements upon the land or the substantial alteration of the natural character of the land, except as this right is expressly reserved in the instruments evidencing the easement or restriction.

(3) "Open-space land" means any land which is provided or preserved for:

(a) park or recreational purposes;

(b) conservation of land or other natural resources;

(c) historic or scenic purposes; or

(d) assisting in the shaping of the character, direction, and timing of community development.

(4) "Public body" means the state, counties, cities, towns, and other municipalities.

(5) "Qualified private organization" means a private organization:

(a) competent to own interests in real property;

(b) which qualifies and holds a general tax exemption under the federal Internal Revenue Code, section 501(c); and

(c) whose organizational purposes are designed to further the purposes of this chapter.

(6) "Urban area" means any area which is urban in character, including surrounding areas which form an economic and socially related region, taking into consideration such factors as present and future population trends and patterns of urban growth, location of transportation facilities and systems, and distribution of industrial, commercial, residential, governmental, institutional, and other activities.

History: **En. Sec. 3, Ch. 337, L. 1969; amd. Sec. 3, Ch. 489, L. 1975; R.C.M. 1947, 62-603(part).**

76-6-105. Construction of chapter. (1) Insofar as the provisions of this chapter are inconsistent with the provisions of any other law, the provisions of this chapter shall be controlling. The powers conferred by this chapter shall be in addition and supplemental to the powers conferred by any other law.

(2) This subsection shall not be construed to imply that any easement, covenant, condition, or restriction which does not have the benefit of this chapter shall on account of any provisions hereof be unenforceable. Nothing in this chapter shall diminish the powers granted by any general or special law to acquire by purchase, gift, eminent domain, or otherwise and to use land for public purposes.

History: **(1)En. Sec. 9, Ch. 337, L. 1969; Sec. 62-609, R.C.M. 1947; (2)En. 62-618 by Sec. 14, Ch. 489, L. 1975; Sec. 62-618, R.C.M. 1947; R.C.M. 1947, 62-609(part), 62-618.**

76-6-106. Acquisition and designation of real property by public body. To carry out the purposes of this chapter, any public body may:

(1) acquire by purchase, gift, devise, bequest, or grant title to or any interests or rights in real property, including land and water, that will provide a means for the preservation or provision of significant open-space land or the preservation of native plants or animals, biotic communities, or geological or geographical formations of scientific, aesthetic, or educational interest, or both;

(2) designate any real property, including land and water, in which it has an interest to be retained and used for the preservation and provision of significant open-space land or the preservation of native plants or animals, biotic communities, or geological or geographical formations of scientific, aesthetic, or educational interests, or both.

History: **En. Sec. 4, Ch. 337, L. 1969; amd. Sec. 4, Ch. 489, L. 1975; R.C.M. 1947, 62-604(part).**

76-6-107. Conversion or diversion of open-space land. (1) No open-space land, the title to or interest or right in which has been acquired under this chapter, shall be converted or diverted from open-space land use unless the conversion or diversion is:

(a) necessary to the public interest;

(b) not in conflict with the program of comprehensive planning for the area; and

(c) permitted by the conditions imposed at the time of the creation of the conservation easement.

(2) Other real property of at least equal fair market value and of as nearly as feasible equivalent usefulness and location for use as open-space land shall be substituted within a reasonable period not exceeding 1 year for any real property converted or diverted from open-space land use. Property substituted is subject to the provisions of this chapter.

History: **En. Sec. 5, Ch. 337, L. 1969; amd. Sec. 5, Ch. 489, L. 1975; R.C.M. 1947, 62-605(1).**

76-6-108. Conveyance or lease of open-space lands. A grantee may convey or lease any real property it has acquired or which has been designated for the purposes of this chapter. The conveyance or lease shall be subject to contractual arrangements that will preserve the property as open-space land and which are consistent with the express terms and conditions of the grant unless the property is to be converted or diverted from open-space land use in accordance with the provisions of 76-6-107.

History: **En. Sec. 5, Ch. 337, L. 1969; amd. Sec. 5, Ch. 489, L. 1975; R.C.M. 1947, 62-605(2).**

76-6-109. Powers of public bodies. (1) A public body shall have all the powers necessary or convenient to carry out the purposes and provisions of this chapter, including the following powers in addition to others granted by this chapter:

(a) to borrow funds and make expenditures necessary to carry out the purposes of this chapter;

(b) to advance or accept advances of public funds;

(c) to apply for and accept and utilize grants and any other assistance from the federal government and any other public or private sources, to give such security as may be required, to enter into and carry out contracts or agreements in connection with the assistance, and to include in any contract for assistance from the federal government such conditions imposed pursuant to federal laws as the public body may deem reasonable and appropriate and which are not inconsistent with the purposes of this chapter;

(d) to make and execute contracts and other instruments necessary or convenient to the exercise of its powers under this chapter;

(e) in connection with the real property acquired or designated for the purposes of this chapter, to provide or to arrange or contract for the provision, construction, maintenance, operation, or repair by any person or agency, public or private, of services, privileges, works, streets, roads, public utilities, or other facilities or structures that may be necessary to the provision, preservation, maintenance, and management of the property as open-space land;

(f) to insure or provide for the insurance of any real or personal property or operations of the public body against any risks or hazards, including the power to pay premiums on the insurance;

(g) to demolish or dispose of any structures or facilities which may be detrimental to or inconsistent with the use of real property as open-space land; and

(h) to exercise any or all of its functions and powers under this chapter jointly or cooperatively with public bodies of one or more states, if they are so authorized by state law, and with one or more public bodies of this state and to enter into agreements for joint or cooperative action.

(2) For the purposes of this chapter, the state or a city, town, other municipality, or county may:

(a) appropriate funds;

(b) levy taxes and assessments according to existing codes and statutes not to exceed 1 mill;

(c) issue and sell its general obligation bonds in the manner and within the limitations prescribed by the applicable laws of the state; and

(d) exercise its powers under this chapter through a board or commission or through such office or officers as its governing body by resolution determines or as the governor determines in the case of the state.

History: **En. Sec. 6, Ch. 337, L. 1969; R.C.M. 1947, 62-606.**

76-6-110. Authorization and funding for planning commission. (1) The state, counties, cities, towns, or other municipalities in an urban area, acting jointly or in cooperation, are authorized to perform comprehensive planning for the urban area and to establish and maintain a planning commission for this purpose and related planning activities.

(2) Funds may be appropriated and made available for the comprehensive planning. Financial or other assistance from the federal government and any other public or private sources may be accepted and utilized for the planning.

History: **En. Sec. 7, Ch. 337, L. 1969; R.C.M. 1947, 62-607.**

Part 2

Conservation Easements

76-6-201. Conservation easements in general. (1) Where a public body acquires under this chapter an interest in land less than fee, this acquisition shall be by conservation easement.

(2) A conservation easement may be applied to urban or nonurban land.

History: **En. Secs. 3, 4, Ch. 337, L. 1969; amd. Secs. 3, 4, Ch. 489, L. 1975; R.C.M. 1947, 62-603(part), 62-604(part).**

76-6-202. Duration of conservation easements. Conservation easements may be granted either in perpetuity or for a term of years. If granted for a term of years, that term may not be less than 15 years. An easement granted for a term of years may be renewed for a term of 15 or more years upon the execution of a new granting instrument by the parties.

History: **En. Sec. 3, Ch. 337, L. 1969; amd. Sec. 3, Ch. 489, L. 1975; R.C.M. 1947, 62-603(part).**

76-6-203. Types of permissible easements. Easements or restrictions under this chapter may prohibit or limit any or all of the following:

(1) structures—construction or placing of buildings, camping trailers, housetrailers, mobile homes, roads, signs, billboards or other advertising, utilities, or other structures on or above the ground;

(2) landfill—dumping or placing of soil or other substance or material as landfill or dumping or placing of trash, waste, or unsightly or offensive materials;

(3) vegetation—removal or destruction of trees, shrubs, or other vegetation;

(4) loam, gravel, etc.—excavation, dredging, or removal of loam, peat, gravel, soil, rock, or other material substance;

(5) surface use—surface use except for such purposes permitting the land or water area to remain predominantly in its existing condition;

(6) acts detrimental to conservation—activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat and preservation;

(7) subdivision of land—subdivision of land as defined in 76-3-103, 76-3-104, and 76-3-202;

(8) other acts—other acts or uses detrimental to such retention of land or water areas in their existing conditions.

History: **En. 62-610 by Sec. 7, Ch. 489, L. 1975; R.C.M. 1947, 62-610; amd. Sec. 16, Ch. 266, L. 1979.**

76-6-204. Acquisition of conservation easements by qualified private organizations. Any qualified private organization may acquire by a conservation easement, by purchase, or by gift, devise, bequest, or grant title to any interest or interests in rights in real property, including land and water, that will provide a means for the preservation or provision of permanent significant open-space land and/or the preservation of native plants or animals, biotic communities, or geological or geographical formations of scientific, aesthetic, or educational interest.

History: **En. 62-611 by Sec. 8, Ch. 489, L. 1975; R.C.M. 1947, 62-611.**

76-6-205. Assignability of easements. For the purposes of this chapter, all conservation easements shall be assignable unless the instrument of conveyance or ownership expressly stipulates otherwise. No conservation easement shall be unenforceable on account of the benefit being assignable or being assigned to any other government body or private organization unless such assignment has violated the express terms of the instrument of conveyance or ownership. The assignees must be qualified under the terms of this chapter to hold a conservation easement.

History: **En. 62-613 by Sec. 10, Ch. 489, L. 1975; R.C.M. 1947, 62-613.**

76-6-206. Review by local planning authority. In order to minimize conflict with local comprehensive planning, all conservation easements shall be subject to review prior to recording by the appropriate local planning authority for the county within which the land lies. It shall be the responsibility of the entity acquiring the conservation easement to present the proposed conveyance of the conservation easement to the appropriate local planning authority. The local planning authority shall have 90 days from receipt of the proposed conveyance within which to review and to comment upon the relationship of the proposed conveyance to comprehensive planning for the area. Such comments will not be binding on the proposed grantor or grantee but shall be merely advisory in nature. The proposed conveyance may be recorded after comments have been received from the local planning authority or the local planning authority has indicated in writing it will have no comments or 90 days have elapsed, whichever occurs first.

History: **En. 62-614 by Sec. 11, Ch. 489, L. 1975; R.C.M. 1947, 62-614.**

76-6-207. Recording and description of easement. (1) All conservation easements shall be duly recorded in the county where the land lies so as to effect their titles in the manner of other conveyances of interest in land and shall describe the land subject to said conservation easement by adequate legal description or by reference to a recorded plat showing its boundaries.

(2) The county clerk and recorder shall upon recording cause a copy of the conservation easement to be placed in a separate file within the office of the county clerk and recorder and shall cause a copy of the conservation easement to be mailed to the department of revenue.

History: **En. 62-615 by Sec. 12, Ch. 489, L. 1975; R.C.M. 1947, 62-615.**

76-6-208. Taxation of property subject to conservation easement. (1) Assessments made for taxation on property subject to a conservation easement either in perpetuity or for a term of years, where a public body or a qualifying private organization holds the conservation easement, shall be determined on the basis of the restricted purposes for which the property may be used. The minimum assessed value for land subject to an easement conveyed under this chapter may not be less than the actual assessed value of such land in calendar year 1973. Any land subject to such easement may not be classified into a class affording a lesser assessed valuation solely by reason of the creation of the easement. The value of the interest held by a public body or qualifying private organization shall be exempt from property taxation.

(2) Expiration of an easement granted for a term of years shall not result in a reassessment of the land for property tax purposes if the easement is renewed and the granting instrument reflecting the renewed easement is executed and properly filed not later than 15 days after the date of expiration.

History: **En. Sec. 8, Ch. 337, L. 1969; amd. Sec. 6, Ch. 489, L. 1975; R.C.M. 1947, 62-608.**

76-6-209. Easements to run with the land. The provisions of 70-17-202 and 70-17-203(1) and (2) notwithstanding, for the purposes of this chapter, all conservation easements, whether held by public bodies or qualifying private organizations, shall be considered to run with the land, whether or not such fact is stipulated in the instrument of conveyance or ownership.

History: **En. 62-612 by Sec. 9, Ch. 489, L. 1975; R.C.M. 1947, 62-612(part).**

76-6-210. Enforcement. (1) Conservation easements may be enforced by injunction or proceedings in equity. Representatives of the grantee of the conservation easement shall be entitled to enter the land in a reasonable manner and at reasonable times to assure compliance.

(2) No conservation easement shall be unenforceable on account of lack of privity of estate or contract or lack of benefit to particular land or on account of such conservation easement not being an appurtenant easement or because such easement is an easement in gross.

History: **En. 62-612, 62-616 by Secs. 9, 13, Ch. 489, L. 1975; R.C.M. 1947, 62-612(part), 62-616.**

76-6-211. Who may enforce easement. (1) The owner of any estate in a dominant tenement or the occupant of such tenement may maintain an action for the enforcement of an easement attached thereto.

(2) Public bodies holding conservation easements shall enforce the provisions of these easements.

History: **(1)En. Sec. 1258, Civ. C. 1895; re-en. Sec. 4515, Rev. C. 1907; re-en. Sec. 6757, R.C.M. 1921; Cal. Civ. C. Sec. 809; Field Civ. C. Sec. 253; re-en. Sec. 6757, R.C.M. 1935; Sec. 67-609,**

R.C.M. 1947; redes. 62-617 by Sec. 15, Ch. 489, L. 1975; Sec. 62-617, R.C.M. 1947; (2)En. Sec. 4, Ch. 337, L. 1969; amd. Sec. 4, Ch. 489, L. 1975; Sec. 62-604, R.C.M. 1947; R.C.M. 1947, 62-604(part), 62-617.

CHAPTERS 7 THROUGH 10

RESERVED

CHAPTER 11

NATURAL RESOURCES IN GENERAL

Part 1 — Protection From Fire

Section

76-11-101. Protection of natural resources from fire.
76-11-102. Cooperative agreements with owners and lessees of land for fire protection and conservation.

Part 2 — Soil Survey and Mapping Program

76-11-201. Short title.
76-11-202. Purpose.
76-11-203. Direction to state agencies.
76-11-204. Professional and technical assistance.

Part 1

Protection From Fire

Part Compiler's Comments

Functions of Department of Natural Resources and Conservation Transferred to Department of State Lands: Section 1, Ch. 529, L. 1981, provided: "(1) The functions of protecting natural resources from fire in Title 76, chapter 11, part 1; of protection of forest resources in Title 76, chapter 13; of appraising, protecting, and selling state timberlands in Title 77, chapter 5; and of recommending closing lands to hunting and fishing in fire danger areas under 87-3-106 are transferred from the department of natural resources and conservation to the department of state lands.

(2) Unless inconsistent with this act, any reference to "department of natural resources and conservation" in those sections is changed to "department of state lands".

(3) Any corresponding internal references shall be changed by the code commissioner."

Severability: Section 9, Ch. 529, L. 1981, was a severability section.

Transition: Section 10, Ch. 529, L. 1981, provided: "The provisions of 2-15-131 through 2-15-137 apply to the transfer of functions under this act."

Effective Date: Section 11, Ch. 529, L. 1981, provided: "This act is effective July 1, 1981."

76-11-101. Protection of natural resources from fire. The department of state lands, under such rules as the state board of land commissioners may provide, shall protect the natural resources of the state, especially the natural resources owned by the state, from destruction by fire and for such purpose, in emergencies, may employ men and incur other expenses when necessary.

History: En. Sec. 14, Ch. 147, L. 1909; re-en. Sec. 1836, R.C.M. 1921; re-en. Sec. 1836, R.C.M. 1935; amd. Sec. 1, Ch. 220, L. 1955; amd. Sec. 105, Ch. 253, L. 1974; amd. Sec. 18, Ch. 397, L. 1977; R.C.M. 1947, 81-1415; amd. Sec. 1, Ch. 529, L. 1981.

Compiler's Comments

1981 Amendment: Changed "the department of natural resources and conservation" to "the department of state lands" at the beginning of the section.

Severability: Section 9, Ch. 529, L. 1981, was a severability section.

Effective Date: Section 11, Ch. 529, L. 1981, provided: "This act is effective July 1, 1981."

76-11-102. Cooperative agreements with owners and lessees of land for fire protection and conservation. (1) For the purpose of more adequately promoting and facilitating the cooperation, financial and otherwise, between the state and all of the public and private agencies or individuals therein, the department of state lands may cooperate with owners or lessees of farm, range, forest, watershed, or other uncultivated lands in private and public ownership for the protection from fire of the cultivated agricultural crops or natural resources existing or growing thereon and also in the conservation and perpetuation of such lands and resources, including the prevention of soil erosion and the regulation of stream flow.

(2) The state treasurer is hereby authorized to receive money that may be appropriated or allotted for the purposes named in subsection (1) by the state, counties, municipalities, the United States government or any department thereof, or other organization or individual.

History: (1)En. Sec. 9, Ch. 179, L. 1925; re-en. Sec. 1830.9, R.C.M. 1935; amd. Sec. 1, Ch. 193, L. 1947; amd. Sec. 101, Ch. 253, L. 1974; Sec. 81-1409, R.C.M. 1947; (2)En. Sec. 10, Ch. 179, L. 1925; re-en. Sec. 1830.10, R.C.M. 1935; amd. Sec. 216, Ch. 147, L. 1963; Sec. 81-1410, R.C.M. 1947; R.C.M. 1947, 81-1409, 81-1410; amd. Sec. 1, Ch. 529, L. 1981.

Compiler's Comments

1981 Amendment: Changed "the department of natural resources and conservation" to "the department of state lands" in the middle of (1).

Severability: Section 9, Ch. 529, L. 1981, was a severability section.

Effective Date: Section 11, Ch. 529, L. 1981, provided: "This act is effective July 1, 1981."

Part 2

Soil Survey and Mapping Program

76-11-201. Short title. This part may be cited as the "Montana Soil Survey Act".

History: En. Sec. 1, Ch. 358, L. 1979.

Compiler's Comments

Severability. Sec. 6, Ch. 358, L. 1979, was a severability clause.

76-11-202. Purpose. (1) The legislature finds that the soils of the state of Montana are one of its most basic and precious natural resources and that detailed knowledge of soil capabilities and adaptability is essential for:

(a) making wise land use decisions;

(b) preparing plans for cities, towns, counties, planning boards, farmers, foresters, industrial developers, and residential developers;

(c) locating and designing buildings, highways, reservoirs, and recreation areas; and

(d) protecting our forest, range, and agricultural lands.

(2) Pursuant to these findings, it is the intention of the legislature to accelerate the survey and mapping of the state's soil resources, to set a goal of completing the soil survey and mapping program.

History: En. Sec. 2, Ch. 358, L. 1979.

76-11-203. Direction to state agencies. (1) The department of natural resources and conservation shall develop a plan for completing the soil survey and mapping program in cooperation with and according to the standards set forth by the national cooperative soil survey program and the Montana state agricultural experiment station.

(2) The soil survey plan shall identify all projected local participation, all funds available from state and federal agencies, including planning grants, and any and all additional equipment, personnel, facilities, supplies, maps and such other material necessary to complete the soil survey and mapping program.

(3) The soil survey plan shall determine geographic areas without modern soil survey information and shall establish in cooperation with the national cooperative soil survey program priorities for completing soil surveys based upon the needs of the geographic areas.

(4) The department of natural resources and conservation shall oversee the plan for completing the soil survey and mapping program and shall report annually on its progress to the governor and legislature not later than January 1 of each year, beginning in 1981.

History: En. Sec. 3, Ch. 358, L. 1979.

76-11-204. Professional and technical assistance. The department of natural resources and conservation, with the advice and recommendations of the advisory council provided for in 2-15-3306, may use such professional, technical, and legal counsel and assistance as it determines necessary to develop and implement a soil survey plan to accelerate the completion of the national cooperative soil survey and mapping program in Montana.

History: En. Sec. 5, Ch. 358, L. 1979.

CHAPTER 12

WILD AND SCENIC RESOURCES

Part 1 — Natural Areas

Section

76-12-101. Short title.
76-12-102. Legislative findings.
76-12-103. Statement of policy.
76-12-104. Definitions.
76-12-105. Identification of natural areas.
76-12-106. Recommendations to board.
76-12-107. Methods of bringing land under part.
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76-12-110. Restriction on condemnation or development of natural areas.
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76-12-112. Administrative rules and hearing requirements.
76-12-113. Advisory council.
76-12-114. Council recommendations to board.
76-12-115. Consultation with interested parties.
76-12-116. Files and proceedings open to public.
76-12-117. Application of more restrictive provisions.

Part 1

Natural Areas

76-12-101. Short title. This part shall be known and may be cited as the "Montana Natural Areas Act of 1974".

History: **En. 81-2701 by Sec. 1, Ch. 254, L. 1974; R.C.M. 1947, 81-2701.**

76-12-102. Legislative findings. The legislature finds that:

(1) in the expanses of Montana there are natural areas possessing significant scenic, educational, scientific, biological, and/or geological values or areas possessing these characteristics to a degree promising their restoration to a natural state;

(2) since the development of these areas is an irreversible commitment of a finite and diminishing resource of fundamental importance, the remaining areas should be preserved for the benefit of this and future generations; and

(3) currently there are no regulations promulgated by the state or local governments to insure adequate protection for natural areas.

History: **En. 81-2702 by Sec. 2, Ch. 254, L. 1974; R.C.M. 1947, 81-2702(part).**

76-12-103. Statement of policy. (1) It is the intention of the legislature to establish a system for the protection of natural or potentially natural areas in order to preserve their natural ecosystem integrity in perpetuity.

(2) In this connection, the legislature recognizes the fact that the school trust lands are held in trust for the support of education and for the attainment of other worthy objects helpful to the well-being of the people of the state; that it is the duty of the board of land commissioners to administer this trust so as to secure the largest measure of legitimate and reasonable advantage to the state; and hereby declares the preservation of natural areas, whether trust or other lands, for the enjoyment and inspiration of future generations to be an object worthy of legislative action helpful to the well-being of the people of the state and also declares that the preservation of natural areas on state trust land has sufficient value to present and future education to meet the state's obligation for the disposition and utilization of trust lands as specified in the Enabling Act.

History: **En. 81-2702 by Sec. 2, Ch. 254, L. 1974; R.C.M. 1947, 81-2702(part).**

76-12-104. Definitions. (1) "Board" means the board of land commissioners.

(2) "Council" means the natural areas advisory council created by this part.

(3) "Department" means the department of state lands.

(4) "Natural area" means an area of land which must generally appear to have been affected primarily by the forces of nature with the visual aspects of human intrusion not dominant and also must have one or more of the following characteristics:

(a) an outstanding mixture or variety of vegetation, wildlife, water resource, landscape, and scenic values;

(b) an important or rare ecological or geological feature or other rare or significant natural feature worthy of preservation for scientific, educational, or ecological purposes.

History: **En. 81-2703 by Sec. 3, Ch. 254, L. 1974; R.C.M. 1947, 81-2703.**

76-12-105. Identification of natural areas. (1) The department shall establish and utilize procedures to identify the existing or potentially natural areas on lands under its jurisdiction and shall collect information on potential natural areas on private, county, and other state land.

(2) The department of natural resources shall cooperate with the department by reporting potential natural areas on state timber lands.

History: **En. 81-2705 by Sec. 5, Ch. 254, L. 1974; R.C.M. 1947, 81-2705(part).**

76-12-106. Recommendations to board. The department shall make recommendations to the board for designation of natural areas on state lands controlled by the board and for acquisition of interests in other lands for the preservation of natural areas.

History: **En. 81-2705 by Sec. 5, Ch. 254, L. 1974; R.C.M. 1947, 81-2705(part).**

76-12-107. Methods of bringing land under part. A natural area, as defined in 76-12-104, may become subject to the provisions of this part in any of the following ways:

(1) designation by the board on lands controlled by the board;

(2) designation by the legislature on lands owned by the state of Montana;

(3) acquisition by the board by purchase with consent of the property owner of sufficient interests in private property to protect the natural area; provided, however, that transfer of surface property or development rights shall not alter the rights attending the subsurface estate if owned by another party;

(4) gift accepted by the board;

(5) trade of state-owned trust land for a natural area on federal, county, or private land, provided, however, that lands received in exchange for trust lands should be equal in value to the exchanged trust land and as closely as possible equal in area.

History: **En. 81-2704 by Sec. 4, Ch. 254, L. 1974; R.C.M. 1947, 81-2704.**

76-12-108. Acquisition of lands. Subject to the limits of available appropriations, the board is authorized to acquire interests to lands by any lawful means for the purpose of designating natural areas; provided that the board shall exercise the power of eminent domain only in specific instances where authorized by the legislature.

History: **En. 81-2707 by Sec. 7, Ch. 254, L. 1974; R.C.M. 1947, 81-2707.**

76-12-109. Report to legislature. The board shall submit to each legislature an annual report on its designation and acquisition activities.

History: **En. 81-2705 by Sec. 5, Ch. 254, L. 1974; R.C.M. 1947, 81-2705(part).**

76-12-110. Restriction on condemnation or development of natural areas. Natural areas acquired or designated in accordance with the provisions of this part are protected from condemnation or other development adversely affecting the integrity of the natural area until legislative action is taken specifically authorizing the condemnation or development.

History: **En. 81-2708 by Sec. 8, Ch. 254, L. 1974; R.C.M. 1947, 81-2708(1).**

76-12-111. Continuation of existing uses. Land uses on the designated or acquired natural area in existence at the time of designation or acquisition by the board may continue under appropriate leases or agreements. All such land uses shall be controlled under regulations established by the board under 76-12-112.

History: **En. 81-2708 by Sec. 8, Ch. 254, L. 1974; R.C.M. 1947, 81-2708(2).**

76-12-112. Administrative rules and hearing requirements. (1) The board shall, after at least one public hearing, promulgate comprehensive regulations for the protection of acquired and designated natural areas within its jurisdiction. Such regulations shall be consistent with the intent of this part and shall be promulgated and enforced so as to protect the qualities of the natural areas. Special attention shall be given to protecting areas from recreational overuse.

(2) The regulations shall provide at least two board meetings per year for the receipt of testimony on the board's proposed designation of natural areas. No area shall be designated by the board unless the opportunity for public testimony has been afforded at meetings provided for in the regulations and positive notification of all involved landowners and lessees has been made.

History: **En. 81-2709 by Sec. 9, Ch. 254, L. 1974; R.C.M. 1947, 81-2709.**

76-12-113. Advisory council. If the governor appoints a natural areas advisory council, the council shall consist of seven citizens of the state, four of whom shall possess experience in the evaluation and preservation of natural areas and one member each from agriculture, ranching, and industry.

History: **En. 81-2710 by Sec. 10, Ch. 254, L. 1974; R.C.M. 1947, 81-2710(part).**

76-12-114. Council recommendations to board. (1) The council shall make recommendations to the board for the administration of the natural areas system and additions thereto from state, federal, county, or private land.

(2) Within 90 days of the receipt of a council recommendation, the board shall:

(a) in the case of state trust lands and existing designated areas, promulgate a rule designating a recommended natural area contained in the recommendation and adopting the recommendation or issue a written statement of its reasons for denying the recommendation;

(b) in the case of federal, private, or county land, direct the department to begin investigation and negotiation to acquire by purchase or trade interests in the land necessary to protect the natural area or issue a written statement of its reasons for denying the recommendation.

History: **En. 81-2710 by Sec. 10, Ch. 254, L. 1974; R.C.M. 1947, 81-2710(part).**

76-12-115. Consultation with interested parties. The board and the natural areas advisory council shall consult with citizen organizations and other interested state agencies in the administration of this part.

History: **En. 81-2711 by Sec. 11, Ch. 254, L. 1974; R.C.M. 1947, 81-2711(part).**

76-12-116. Files and proceedings open to public. All files and proceedings under this part shall be open to the public.

History: **En. 81-2711 by Sec. 11, Ch. 254, L. 1974; R.C.M. 1947, 81-2711(part).**

76-12-117. Application of more restrictive provisions. A designated natural area that is or shall become a part of a state park, wildlife refuge, or similar area shall be subject to the provisions of this part and the laws under which the other areas may be administered, and in the case of conflict between the provisions of these laws, the more restrictive provisions shall apply.

History: **En. 81-2712 by Sec. 12, Ch. 254, L. 1974; R.C.M. 1947, 81-2712.**

CHAPTER 13

TIMBER RESOURCES

Part 1 — Protection of Forest Resources

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Chapter Compiler's Comments

Functions of Department of Natural Resources and Conservation Transferred to Department of State Lands: Section 1, Ch. 529, L. 1981, provided: "(1) The functions of protecting natural resources from fire in Title 76, chapter 11, part 1; of protection of forest resources in Title 76, chapter 13; of appraising, protecting, and selling state timberlands in Title 77, chapter 5; and of recommending closing lands to hunting and fishing in fire danger areas under 87-3-106 are transferred from the department of natural resources and conservation to the department of state lands.

(2) Unless inconsistent with this act, any reference to "department of natural resources and conservation" in those sections is changed to "department of state lands".

(3) Any corresponding internal references shall be changed by the code commissioner."

Functions of Board of Natural Resources and Conservation Transferred to Board of Land Commissioners: Section 2, Ch. 529, L. 1981, provided: "(1) The functions of the board of natural resources and conservation in Title 76, chapter 13, relating to protection of forest resources are transferred to the board of land commissioners.

(2) Unless inconsistent with this act, any reference in that chapter to "board of natural resources and conservation" is changed to "board of land commissioners".

(3) Any corresponding internal references shall be changed by the code commissioner."

Severability: Section 9, Ch. 529, L. 1981, was a severability section.

Transition: Section 10, Ch. 529, L. 1981, provided: "The provisions of 2-15-131 through 2-15-137 apply to the transfer of functions under this act."

Effective Date: Section 11, Ch. 529, L. 1981, provided: "This act is effective July 1, 1981."

Part 1

Protection of Forest Resources

76-13-101. Purpose. It is the purpose of this part and part 2 to provide for the protection and conservation of forest resources, range, and water; the regulation of streamflow; and the prevention of soil erosion. It is further the purpose of this part and part 2 to more adequately promote and facilitate the cooperation, financial and otherwise, between the state and public and private agencies which are associated in such work.

History: **En. 28-101.1 by Sec. 1, Ch. 253, L. 1974; R.C.M. 1947, 28-101.1.**

76-13-102. Definitions. Unless the context requires otherwise, in this part and part 2 the following definitions apply:

(1) "Board" means the board of land commissioners provided for in Article X, section 4, of the Montana Constitution.

(2) "Conservation" means the protection and wise use of forest, forest range, forest water, and forest soil resources in keeping with the common welfare of the people of this state.

(3) "Department" means the department of state lands provided for in Title 2, chapter 15, part 32.

(4) "Forest fire" means a fire burning uncontrolled on forest lands.

(5) "Forest fire protection" means the work of prevention, detection, and suppression of forest fires and includes training required to perform those functions.

(6) "Forest fire season" means the period of each year beginning on May 1 and ending on September 30, inclusive.

(7) "Forest fire protection district" means a definite forest land area, the boundaries of which are fixed and wherein forest fire protection is provided through the medium of an agency recognized by the board.

(8) "Forest land" means land which has enough timber, standing or down, slash, or brush to constitute in the judgment of the department a fire menace to life or property. Grassland and agricultural areas are included when those areas are intermingled with or contiguous to and no further than one-half mile from areas of forest land.

(9) "Lands" for conservation purposes means all forest lands within this state which are officially classified by the department as forest lands under 76-13-107.

(10) "Owner" means the person, firm, association, or corporation having the actual, beneficial ownership of forest land or timber other than an easement, right-of-way, or mineral reservation.

(11) "Recognized agency" means an agency organized for the purpose of providing forest fire protection and recognized by the board as giving adequate fire protection to forest lands in accordance with rules adopted by the board.

History: **En. Sec. 3, Ch. 128, L. 1939; amd. Sec. 1, Ch. 216, L. 1955; amd. Sec. 1, Ch. 93, L. 1959; amd. Sec. 1, Ch. 30, L. 1971; amd. Sec. 2, Ch. 253, L. 1974; amd. Sec. 1, Ch. 397, L. 1977; R.C.M. 1947, 28-103(part); amd. Secs. 1, 2, Ch. 529, L. 1981.**

Compiler's Comments

1981 Amendment: Changed the definition of "Board" from "the board of natural resources and conservation, provided for in 2-15-3302" to "the board of land commissioners provided for in Article X, section 4, of the Montana constitution"; and changed the definition of "Department" from "the department of natural resources and conservation" to "the department of state lands" and changed the internal reference from "Title 2, chapter 15, part 33" to "Title 2, chapter 15, part 32."

Severability: Section 9, Ch. 529, L. 1981, was a severability section.

Effective Date: Section 11, Ch. 529, L. 1981, provided: "This act is effective July 1, 1981."

76-13-103. Applicability. This part and part 2 apply to all forest lands within this state which are officially classified by the board as forest lands according to the definition of forest land in 76-13-102.

History: **En. Sec. 4, Ch. 128, L. 1939; amd. Sec. 3, Ch. 141, L. 1941; amd. Sec. 1, Ch. 94, L. 1959; amd. Sec. 3, Ch. 253, L. 1974; R.C.M. 1947, 28-104(2).**

76-13-104. Functions of department. (1) The department may give technical and practical advice concerning forest, range, water, and soil conservation and the establishment and maintenance of woodlots, windbreaks, shelterbelts, and forest fire protection.

(2) The department shall cooperate with all public and other agencies in the development, protection, and conservation of the forest, range, and water resources in this state.

History: En. Sec. 6, Ch. 128, L. 1939; amd. Sec. 5, Ch. 253, L. 1974; amd. Sec. 3, Ch. 397, L. 1977; R.C.M. 1947, 28-106(1), (4), (6); amd. Sec. 4, Ch. 529, L. 1981.

Compiler's Comments

1981 Amendment: Deleted subsection (3), which required the department of natural resources and conservation to assist the department of state lands in protecting and developing state forest and forest lands. This deletion was made because Ch. 529, L. 1981, transferred the duty of protecting forest resources from the department of natural resources and conservation to the department of state lands.

Severability: Section 9, Ch. 529, L. 1981, was a severability section.

Effective Date: Section 11, Ch. 529, L. 1981, provided: "This act is effective July 1, 1981."

76-13-105. Protection of nonforest lands and improvements. Nonforest lands and improvements may be protected by the department when requested by the landowner at rates determined by the department.

History: En. Sec. 6, Ch. 128, L. 1939; amd. Sec. 5, Ch. 253, L. 1974; amd. Sec. 3, Ch. 397, L. 1977; R.C.M. 1947, 28-106(5).

76-13-106. Cooperation between department of state lands and county. The county governing body shall cooperate with the department to the extent legally permissible in providing means and methods of safeguarding the forest land lying within the state and in preventing fire nuisance thereon. The county governing body shall list forest lands under its jurisdiction with the department for forest protection. The money the state and counties become liable for under this section shall be paid from funds provided by law for the protection of the forest lands owned by the state and counties.

History: En. Sec. 22, Ch. 128, L. 1939; amd. Sec. 15, Ch. 253, L. 1974; amd. Sec. 10, Ch. 397, L. 1977; R.C.M. 1947, 28-122; amd. Sec. 5, Ch. 529, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "The department of state lands and" at the beginning of the first and the second sentences; substituted "shall list forest land under its jurisdiction" for "shall list forest land under their jurisdiction" in the second sentence.

Chapter 529, L. 1981, changed the definition of "department" for purposes of this section from the department of natural resources and conservation to the department of state lands (see 76-13-102). The effect of that change is to remove the reference to the department of natural resources and conservation from this section.

Severability: Section 9, Ch. 529, L. 1981, was a severability section.

Effective Date: Section 11, Ch. 529, L. 1981, provided: "This act is effective July 1, 1981."

76-13-107. Classification of forest lands. The department may classify the forest land areas of the state for which conservation and fire protection measures are reasonably required and change or modify the classification from time to time as in its judgment is proper.

History: En. Sec. 6, Ch. 128, L. 1939; amd. Sec. 5, Ch. 253, L. 1974; amd. Sec. 3, Ch. 397, L. 1977; R.C.M. 1947, 28-106(3).

76-13-108. Person responsible for performance of duties. (1) If the owner does not appear upon the public records as the holder of the legal title to the land or timber, he is nevertheless primarily responsible for the performance of the acts and duties imposed upon him by this part and part 2.

(2) Where the owner of the timber is not the owner of the land, the primary responsibility for the performance of the acts and duties imposed by this part and part 2 is upon the owner of the timber.

(3) Where the state has title to forest lands within any organized forest protection district, it shall be considered as an owner and it shall list its lands and pay the assessments to the recognized agencies responsible for lands in such organized forest protection districts.

History: (1), (2)En. Sec. 4, Ch. 128, L. 1939; amd. Sec. 3, Ch. 141, L. 1941; amd. Sec. 1, Ch. 94, L. 1959; amd. Sec. 3, Ch. 253, L. 1974; Sec. 28-104, R.C.M. 1947; (3)En. Sec. 8, Ch. 128, L. 1939; Sec. 28-108, R.C.M. 1947; R.C.M. 1947, 28-104(1), 28-108.

76-13-109. Rules — limitation on rulemaking authority. The board may adopt and enforce through the department reasonable rules for the purpose of enforcing and accomplishing the provisions and purposes of this part and part 2.

History: En. Sec. 5, Ch. 128, L. 1939; amd. Sec. 1, Ch. 90, L. 1959; amd. Sec. 1, Ch. 83, L. 1963; amd. Sec. 1, Ch. 149, L. 1967; amd. Sec. 4, Ch. 253, L. 1974; amd. Sec. 2, Ch. 397, L. 1977; R.C.M. 1947, 28-105(2); amd. Sec. 6, Ch. 529, L. 1981.

Compiler's Comments

1981 Amendment: Deleted subsection (2), which provided that the rules adopted under this section may not conflict with the powers of the board of land commissioners. This amendment was made because the definition of "board" for purposes of this section was changed from the board of natural resources and conservation to the board of land commissioners by Sec. 2, Ch. 529, L. 1981 (see 76-13-102).

Severability: Section 9, Ch. 529, L. 1981, was a severability section.

Effective Date: Section 11, Ch. 529, L. 1981, provided: "This act is effective July 1, 1981."

76-13-110. Owner's right to board hearing. (1) An owner of forest land is entitled to a hearing before the board, after a request therefor, on any subject pertaining to the activities of the board, the department, or any recognized agency as agent of the department affecting the owner's property. A request for a hearing before the board may not have the effect of suspending the operations of the board, the department, or any agent of the department undertaken pursuant to this chapter, but upon the hearing, the board may terminate those operations if found unreasonable.

(2) A hearing pertaining to costs charged against the forest land of an owner for protection thereof, as provided in 76-13-201, must be requested on or before August 15 each year.

History: En. Sec. 4, Ch. 141, L. 1941; amd. Sec. 20, Ch. 253, L. 1974; amd. Sec. 11, Ch. 397, L. 1977; R.C.M. 1947, 28-129.

76-13-111. Permissible expenditures. (1) The following funds may be expended as directed by the department for fire prevention, detection, suppression and for forest range, water, and soil conservation:

(a) all moneys collected by county treasurers as assessments on forest lands for forest protection;

(b) moneys collected for the abatement of public nuisances;

(c) all fines collected for violations of this part or part 2;

(d) the state's share of the cooperative fire protection funds allocated by the federal government;

(e) any other funds provided for the purposes herein indicated.

(2) All other cooperative funds collected, appropriated, or allocated for the use of the department, including funds for the removal of slash hazards resulting from logging or other wood operations on state and private forest lands, those provided for the purpose of helping to maintain the maximum productivity of the forests of the state, those provided for purposes designed to assist the farmers of the state in the establishment of windbreaks and woodlots in localities where those forest plantings are helpful, and funds for other cooperative work, may not be expended except for the specific purposes for which they were collected, appropriated, or allocated.

History: **En. Sec. 23, Ch. 128, L. 1939; amd. Sec. 217, Ch. 147, L. 1963; amd. Sec. 2, Ch. 30, L. 1971; amd. Sec. 16, Ch. 253, L. 1974; R.C.M. 1947, 28-123.**

76-13-112. Penalty for violation. Unless otherwise provided by this part or part 2, a person who violates this part or part 2 or any rule adopted by the board or department pursuant to this part or part 2 is guilty of a misdemeanor and shall be punished by a fine of not more than $500 or imprisonment in a county jail for not more than 6 months or both.

History: **En. Sec. 27, Ch. 128, L. 1939; amd. Sec. 19, Ch. 253, L. 1974; R.C.M. 1947, 28-127.**

76-13-113. Destruction of signs. Any person who shall destroy, deface, remove, injure, or disfigure any sign, placard, proclamation, order, warning, or notice issued by any federal, state, or forest protection agency under the provisions of this part or part 2 and erected or posted at any point in the state shall be guilty of a misdemeanor.

History: **En. Sec. 20, Ch. 128, L. 1939; R.C.M. 1947, 28-120.**

76-13-114. Disposition of fines. Fines collected in a court of the state under this part or part 2 shall be transferred to the state treasurer for deposit in the federal and private grant clearance fund. Whenever a person is convicted in any court of a violation of this part or part 2, the court may levy and collect as costs in the case the amount necessary to compensate the county for the expenditures made in and for the prosecution of the offender. These costs when collected shall be deposited by the court with the proper county treasurer for the benefit of the county.

History: **En. Sec. 21, Ch. 128, L. 1939; amd. Sec. 14, Ch. 253, L. 1974; R.C.M. 1947, 28-121.**

76-13-115 through 76-13-120 reserved.

76-13-121. Permit for burning required. During the forest fire season or an expansion thereof, a person may not ignite or set a forest fire, slash-burning fire, land-clearing fire, debris-burning fire, or an open fire within forest lands without an official written permit to ignite or set the fire from the recognized protection agency for that protection area. A permit is not required in order to build, set, or ignite a campfire within and upon a designated improved camping ground or upon a plot of land from which all vegetable and inflammable matter and debris have been removed to a point where it may not become ignited by the campfire or by sparks therefrom.

History: **En. Sec. 14, Ch. 128, L. 1939; amd. Sec. 11, Ch. 253, L. 1974; amd. Sec. 7, Ch. 397, L. 1977; R.C.M. 1947, 28-114.**

76-13-122. Failure to comply with permit. A person to whom a written permit is issued to set or ignite a fire within forest lands during the forest protection season shall comply strictly with the permit. A person who fails to comply with the permit, leaves the fire unattended, leaves the fire before it is totally extinguished, or negligently allows the fire to spread from or beyond the burning area defined by the permit is guilty of a misdemeanor. The department shall prescribe the form and substance of such permit.

History: En. Sec. 16, Ch. 128, L. 1939; amd. Sec. 12, Ch. 253, L. 1974; R.C.M. 1947, 28-116.

76-13-123. Failure to extinguish campfire. Any person who shall fail to extinguish any campfire set or ignited by him within any forest lands before leaving the same, who shall fail to extinguish any campfire used by him or left in his charge before leaving the same, or who shall negligently allow such fire to spread from the plot described in 76-13-121 shall be guilty of a misdemeanor.

History: En. Sec. 15, Ch. 128, L. 1939; R.C.M. 1947, 28-115.

76-13-124. Throwing lighted materials. A person who throws or places any lighted cigarette, cigar, ashes, or other flaming or glowing substance that may start a fire in or near any forest material is guilty of a misdemeanor.

History: En. Sec. 17, Ch. 128, L. 1939; amd. Sec. 8, Ch. 397, L. 1977; R.C.M. 1947, 28-117.

76-13-125. Spark arresters required. No person may use, drive, or operate within any forest lands any internal combustion engine that is not equipped with a modern, efficient, and adequate spark arrester and with modern, efficient devices to prevent the escape of sparks, coals, cinders, and other burning material from the exhaust of any such engine.

History: En. Sec. 18, Ch. 128, L. 1939; amd. Sec. 9, Ch. 397, L. 1977; R.C.M. 1947, 28-118.

76-13-126. Restrictions on sawdust piles. (1) Before each forest fire season, all persons, firms, or corporations creating or responsible for mill waste within the forest areas shall treat, dispose of, remove, or reduce the hazards created so that the accumulation of sawmilling waste does not constitute a fire hazard.

(2) A sawmill located within or contiguous to forest lands may not accumulate in one pile sawdust in excess of an amount resulting from the sawing of 500,000 feet log scale of sawlogs. However, a larger sawdust pile may be accumulated when there is no reasonable danger of fire therefrom and a permit for the additional accumulation is granted by the department. If burning is the disposal method elected, each sawdust pile so accumulated shall be prepared for burning by cribbing the base of each pile with slabs and burned in accordance with rules adopted by the department.

History: En. Sec. 19, Ch. 128, L. 1939; amd. Sec. 1, Ch. 222, L. 1955; amd. Sec. 1, Ch. 195, L. 1969; amd. Sec. 13, Ch. 253, L. 1974; R.C.M. 1947, 28-119.

Part 2

Provision of Fire Protection Services

76-13-201. Duty of owner to protect against fire. (1) An owner of forest land classified as such by the department shall protect against the starting or existence and suppress the spread of fire on that land. This protection and suppression shall be in conformity with reasonable rules and standards for adequate fire protection adopted by the board.

(2) If the owner does not provide for the protection and suppression, the department may provide it at a cost to the landowner of not more than 16 cents per acre per year and not less than $6 per owner per year in each protection district. The owner of the land shall pay to the county treasurer of the county in which the land is situated the charge for the same approved by the department in accordance with this part and part 1.

(3) No other charges may be assessed those landowners participating except in cases of proven negligence on the part of the landowner or his agent.

History: En. Sec. 9, Ch. 128, L. 1939; amd. Sec. 2, Ch. 141, L. 1941; amd. Sec. 1, Ch. 188, L. 1955; amd. Sec. 1, Ch. 91, L. 1959; amd. Sec. 1, Ch. 148, L. 1967; amd. Sec. 1, Ch. 252, L. 1974; amd. Sec. 6, Ch. 253, L. 1974; amd. Sec. 4, Ch. 397, L. 1977; R.C.M. 1947, 28-109.

76-13-202. Means by which department may provide protection. The department may provide for forest fire protection of any forest lands through the department or by contract or any other feasible means, in cooperation with any federal, state, or other recognized agency.

History: En. Sec. 6, Ch. 128, L. 1939; amd. Sec. 5, Ch. 253, L. 1974; amd. Sec. 3, Ch. 397, L. 1977; R.C.M. 1947, 28-106(2).

76-13-203. Extension of the forest fire season. In the event of excessive or great fire danger, the period defined in 76-13-102(6) may be expanded when in the judgment of the department dangerous fire conditions exist. When expanded, the department shall give public notice.

History: En. Sec. 3, Ch. 128, L. 1939; amd. Sec. 1, Ch. 216, L. 1955; amd. Sec. 1, Ch. 93, L. 1959; amd. Sec. 1, Ch. 30, L. 1971; amd. Sec. 2, Ch. 253, L. 1974; amd. Sec. 1, Ch. 397, L. 1977; R.C.M. 1947, 28-103(part).

76-13-204. Creation of forest fire protection districts. (1) The board may create forest fire protection districts. Before a district is created, the board shall hold a hearing in any county in which the proposed district or a part thereof is included and the department shall give notice of the hearing at least 20 days in advance thereof to all owners to be affected by the proposed district. Service of the notice may be made by registered or certified mail or by publication in a newspaper published in the county in which the hearing is to be held or, if no newspaper is published in the county, then in a newspaper having a general circulation therein.

(2) A forest fire protection district may not be created unless approved in writing by vote of not less than 51% of the owners representing at least 51% of the acreage to be involved in the proposed forest fire protection district.

History: En. Sec. 5, Ch. 128, L. 1939; amd. Sec. 1, Ch. 90, L. 1959; amd. Sec. 1, Ch. 83, L. 1963; amd. Sec. 1, Ch. 149, L. 1967; amd. Sec. 4, Ch. 253, L. 1974; amd. Sec. 2, Ch. 397, L. 1977; R.C.M. 1947, 28-105(1).

76-13-205. Determination of boundaries of district. In establishing boundaries of organized forest fire protection districts covering forest lands, the board may for the purpose of administrative convenience designate recognizable landmarks as boundaries.

History: En. Sec. 10, Ch. 128, L. 1939; amd. Sec. 1, Ch. 92, L. 1959; amd. Sec. 7, Ch. 253, L. 1974; amd. Sec. 5, Ch. 397, L. 1977; R.C.M. 1947, 28-110(2).

76-13-206. What constitutes compliance with duty to protect against fire for landowners within district. An owner of forest lands within an organized forest fire protection district while a member of or while participating in a recognized agency for forest protection or within areas protected by a county shall be considered to have fully complied with the requirements of 76-13-201.

History: En. Sec. 10, Ch. 128, L. 1939; amd. Sec. 1, Ch. 92, L. 1959; amd. Sec. 7, Ch. 253, L. 1974; amd. Sec. 5, Ch. 397, L. 1977; R.C.M. 1947, 28-110(1).

76-13-207. Determination and collection of costs of fire protection. (1) The department shall prepare an annual operation assessment plan in which fire protection costs are determined. The department shall request the legislature to appropriate the state's portion of the cost. After the appropriation is made by the legislature, the department shall cause an assessment to be made on the owners of classified forest land, as specified in 76-13-201, sufficient to bring the total amount received to the amount specified in the approved plan.

(2) On or before the second Tuesday in August of each year, the department shall certify in writing to the county assessor of each county the names of these owners of forest lands in his county, together with a description of their lands and a statement of the amount found to be due and owing by each of the owners to the department for forest fire protection.

(3) Upon receiving the certificate from the department showing the amount due, the county assessor shall extend the amounts upon the county tax rolls covering the lands, and the sums shall become obligations of the owner to be paid and collected in the same manner and at the same time and with like penalties as general state and county taxes upon the same property are collected.

History: En. Sec. 11, Ch. 128, L. 1939; amd. Sec. l, Ch. 95, L. 1959; amd. Sec. 215, Ch. 147, L. 1963; amd. Sec. 8, Ch. 253, L. 1974; amd. Sec. 1, Ch. 110, L. 1977; amd. Sec. 6, Ch. 397, L. 1977; R.C.M. 1947, 28-111(part).

76-13-208. Nature of assessments for forest fire protection. All payments required of owners of forest lands by this part and part 1 are assessments for benefits actually received by those owners in the protection of their lands and are not a tax upon the property of such owners.

History: En. Sec. 11, Ch. 128, L. 1939; amd. Sec. l, Ch. 95, L. 1959; amd. Sec. 215, Ch. 147, L. 1963; amd. Sec. 8, Ch. 253, L. 1974; amd. Sec. 1, Ch. 110, L. 1977; amd. Sec. 6, Ch. 397, L. 1977; R.C.M. 1947, 28-111(3).

76-13-209. Disposition of assessments. All sums collected pursuant to 76-13-207 shall be promptly deposited in the federal and private revenue fund.

History: En. Sec. 11, Ch. 128, L. 1939; amd. Sec. l, Ch. 95, L. 1959; amd. Sec. 215, Ch. 147, L. 1963; amd. Sec. 8, Ch. 253, L. 1974; amd. Sec. 1, Ch. 110, L. 1977; amd. Sec. 6, Ch. 397, L. 1977; R.C.M. 1947, 28-111(part).

76-13-210. Payment under protest. An owner who is required to pay to the county treasurer any sum for forest protection as required by this part or part 1 and who contends that he is not legally obligated to pay the sum or some part thereof shall pay it to the county treasurer under written protest stating the reasons for the protest. The payment under protest and all proceedings subsequent thereto shall be in conformity with the law of this state providing for the payment of taxes under protest and action to recover the same. In the hearing and determination of any action to recover the payment under protest, all questions of the legality and reasonableness of the proceedings of the board and the department may be reviewed and decided.

History: En. Sec. 12, Ch. 128, L. 1939; amd. Sec. 9, Ch. 253, L. 1974; R.C.M. 1947, 28-112.

76-13-211. Amount due for protection treated as lien. (1) Whenever the department provides forest protection during a forest fire season for any forest land or timber not protected by the owner thereof as required by this part or part 1, the amount due for the forest protection is a lien upon the land or timber which shall continue until such time as the amount due is paid.

(2) The lien has the same force, effect, and priority as general tax liens under the laws of the state and is subject and inferior only to tax liens on the lands. The county attorney of the county in which the land is situated shall on request of the department foreclose the lien in the name of the state and in the manner provided by law, or the county attorney upon the request of the department shall institute an action against the forest landowner in the name of the state in any district or justice court having jurisdiction to recover the debt. The state in the action is not required to pay any fees or costs to the clerk of the court or justice of the peace. The complaint and all subsequent proceedings in the action shall conform as nearly as practicable to those provided by 15-16-502.

(3) The remedies provided by this section are cumulative and do not affect the other provisions of this part or part 1 for the payment and collection of amounts due to the department.

History: En. Sec. 13, Ch. 128, L. 1939; amd. Sec. 10, Ch. 253, L. 1974; R.C.M. 1947, 28-113.

Part 3

Control of Forest Diseases and Insect Pests

76-13-301. Policy. It is the public policy of the state to protect and preserve forest resources from destruction by forest insect pests and tree diseases, to protect the forests and watersheds of Montana, to enhance the production of forests, to promote the stability of forest industry, to protect the recreational values of the forest, and to independently and through cooperation with the federal government and private forest landowners adopt measures to control, suppress, and eradicate outbreaks of forest insect pests and tree diseases.

History: En. Sec. 1, Ch. 25, L. 1953; Sec. 28-130, R.C.M. 1947; amd. and redes. 28-204 by Sec. 21, Ch. 253, L. 1974; R.C.M. 1947, 28-204.

76-13-302. Definitions. In this part, the following definitions apply:

(1) "Department" means the department of state lands provided for in Title 2, chapter 15, part 32.

(2) "Forest land" means any land which has enough forest growth, standing or down, to constitute in the judgment of the department an insect or disease infestation breeding ground of a nature to constitute a menace,

injurious and dangerous to the forest resources in the district or zone of infestation.

(3) “Forest landowner” means the person, firm, association, or corporation having the actual, beneficial ownership of forest land or timber, other than an easement, right-of-way, or mineral reservation.

History: En. Sec. 3, Ch. 25, L. 1953; Sec. 28-131, R.C.M. 1947; amd. and redes. 28-205 by Sec. 22, Ch. 253, L. 1974; R.C.M. 1947, 28-205; amd. Sec. 1, Ch. 529, L. 1981.

Compiler’s Comments

1981 Amendment: Changed the definition of “Department” from “the department of natural resources and conservation, provided for in Title 2, chapter 15, part 33” to “the department of state lands, provided for in Title 2, chapter 15, part 32”.

Severability: Section 9, Ch. 529, L. 1981, was a severability section.

Effective Date: Section 11, Ch. 529, L. 1981, provided: “This act is effective July 1, 1981.”

76-13-303. Creation of zone of infestation. Whenever the department determines that there exists an infestation of forest insect pests or forest tree diseases injurious to the timber or forest growth on forest lands within the state and that the infestation is of such a character as to be a menace to the timber or forest growth of this state, the department shall, with the approval of the board of land commissioners, declare the existence of a zone of infestation and fix the boundaries so as to definitely describe and identify the zone.

History: En. Sec. 5, Ch. 25, L. 1953; Sec. 28-133, R.C.M. 1947; amd. and redes. 28-206 by Sec. 23, Ch. 253, L. 1974; R.C.M. 1947, 28-206(1); amd. Sec. 2, Ch. 529, L. 1981.

Compiler’s Comments

1981 Amendment: Substituted “the board of land commissioners” for “the board of natural resources and conservation”.

Severability: Section 9, Ch. 529, L. 1981, was a severability section.

Effective Date: Section 11, Ch. 529, L. 1981, provided: “This act is effective July 1, 1981.”

76-13-304. Suppression and eradication of infestation. (1) The department may enter upon the land within the zone and cause the forest insect pest infestation or forest tree disease to be suppressed, eradicated, and destroyed in the manner approved by it.

(2) In order to accomplish the suppression, eradication, and destruction of the infestation, the department may enter into cooperative agreements with the federal government or other public or private agencies and with forest landowners, using such funds as are made available for those purposes.

History: En. Sec. 5, Ch. 25, L. 1953; Sec. 28-133, R.C.M. 1947; amd. and redes. 28-206 by Sec. 23, Ch. 253, L. 1974; R.C.M. 1947, 28-206(2).

76-13-305. Termination of zone of infestation. When the department determines that forest insect or disease control work within the designated zone of infestation is no longer necessary or feasible, it shall abolish the zone.

History: En. Sec. 6, Ch. 25, L. 1953; Sec. 28-134, R.C.M. 1947; amd. and redes. 28-207 by Sec. 24, Ch. 253, L. 1974; R.C.M. 1947, 28-207.

Part 4

Control of Timber Slash and Debris

76-13-401. Definitions. As used in this part, the following definitions apply:

(1) "Board" means the board of land commissioners provided for in Article X, sec. 4, of the Montana Constitution.

(2) "Department" means the department of state lands provided for in Title 2, chapter 15, part 32.

(3) "Person" means an individual, association, partnership, corporation, estate, or any other entity.

History: En. 28-403.1 by Sec. 1, Ch. 522, L. 1975; R.C.M. 1947, 28-403.1; amd. Secs. 1, 2, Ch. 529, L. 1981.

Compiler's Comments

1981 Amendment: Changed the definition of "Board" from "the board of natural resources and conservation, provided for in 2-15-3302" to "the board of land commissioners provided for in Article X, section 4, of the Montana constitution"; and changed the definition of "Department" from "the department of natural resources and conservation, provided for in Title 2, chapter 15, part 33" to "the department of state lands provided for in Title 2, chapter 15, part 32."

Severability: Section 9, Ch. 529, L. 1981, was a severability section.

Effective Date: Section 11, Ch. 529, L. 1981, provided: "This act is effective July 1, 1981."

76-13-402. Basis for management of fire hazards. The reduction or management of fire hazards referred to in this part shall be carried on by the department and the state fire wardens in keeping with modern and progressive forest practices and more effective fire control and may include but is not limited to the taking of protective measures to prevent injury or the destruction of forest resources without actual abatement of the hazard.

History: Ap. p. Sec. 5, Ch. 207, L. 1959; amd. Sec. 1, Ch. 147, L. 1971; amd. Sec. 31, Ch. 253, L. 1974; amd. Sec. 6, Ch. 522, L. 1975; Sec. 28-408, R.C.M. 1947; Ap. p. Sec. 8, Ch. 207, L. 1959; amd. Sec. 33, Ch. 253, L. 1974; Sec. 28-411, R.C.M. 1947; R.C.M. 1947, 28-408(2), 28-411(part).

76-13-403. Supervision by department. The department, under such rules as the board adopts, may supervise and inspect the reduction or management of any fire hazard created by the cutting of any forest product on private land in the state.

History: En. Sec. 5, Ch. 207, L. 1959; amd. Sec. 1, Ch. 147, L. 1971; amd. Sec. 31, Ch. 253, L. 1974; amd. Sec. 6, Ch. 522, L. 1975; R.C.M. 1947, 28-408(1).

76-13-404. Contracts with owners of forest lands. The department may, in such form and containing such conditions as it prescribes, enter into agreements with the owners of any forest lands or any operator engaged in operations on lands within the state whereby slash is created. Under the contract the department may assume all responsibility for the reduction or management of any fire hazard. The department may provide in the agreement the amount to be paid by the owner or operator to the department by reason of its agreement to assume the reduction or management of the fire hazard, but the amount may not exceed $6 for each 1,000 feet log scale or the equivalent thereof if forest products other than logs are cut.

History: En. Sec. 7, Ch. 207, L. 1959; amd. Sec. 2, Ch. 147, L. 1971; amd. Sec. 32, Ch. 253, L. 1974; amd. Sec. 7, Ch. 522, L. 1975; R.C.M. 1947, 28-410; amd. Sec. 1, Ch. 670, L. 1979.

76-13-405. Contracts with forest protective agencies. The department is hereby authorized to enter into contracts with forest protective agencies, including agencies of the United States, for the reduction or management of such fire hazards when in its opinion the work can best be accomplished in that manner.

History: En. Sec. 8, Ch. 207, L. 1959; amd. Sec. 33, Ch. 253, L. 1974; R.C.M. 1947, 28-411(part).

76-13-406. Limitation on liability. The department, state firewardens, and recognized forest protective agencies, including any agency of the United States, with which the department has entered into an agreement for the reduction or management of any fire hazard as provided in 76-13-405 and any officer or official of such agency shall not be liable for any damage to the land, product, improvement, or other things of value of whatsoever nature upon the lands on which the fire hazards are being managed or reduced in accordance with provisions of 76-13-402 through 76-13-405 and 76-13-411(1) when all requisite care and caution has been used and such work is being or has been performed in compliance with the rules provided in 76-13-403.

History: En. Sec. 8, Ch. 207, L. 1959; amd. Sec. 33, Ch. 253, L. 1974; R.C.M. 1947, 28-411(part).

76-13-407. Reduction of slash and debris along right-of-way. (1) A person clearing right-of-way for any railroad, public highway, public trail, private road, trail, ditch, dike, pipeline or wire lines, or any other transmission or transportation utility right-of-way, except temporary roads located within the boundaries of the cutting area and which are used in the actual logging operations, shall reduce the hazard resulting from the clearing or from the cutting of material for the construction of the public or private utility unless exempted by the department. At least 10 days before commencement of the clearing, the person conducting the clearing shall notify the department of commencement of the clearing in the form and manner the department provides.

(2) Hazard reduction, including burning where this method of disposal is used, shall be done as rapidly as cutting or clearing progresses; however, upon application to the department, it may grant a permit extending the time within which the burning must be done in compliance with this chapter relating to burning permits during the closed season.

(3) This section applies to all clearing of rights-of-way across private land and on behalf of the state, county, highway districts, and road districts, whether the work is done by day labor or by contract, and unless unavoidable emergency prevents, provision shall be made by the proper officials conducting, directing, or letting the work for withholding until it is complete a sufficient portion of the payment therefor to assure compliance with this part.

History: En. Sec. 2, Ch. 207, L. 1959; amd. Sec. 28, Ch. 253, L. 1974; amd. Sec. 3, Ch. 522, L. 1975; R.C.M. 1947, 28-405; amd. Sec. 2, Ch. 670, L. 1979.

76-13-408. Fire hazard reduction agreement and bond. (1) Before cutting any forest product or conducting timber stand improvement such as but not limited to thinning, weeding, or pruning upon private lands within the state, the person conducting such practice shall provide for the reduction or management of the fire hazard to be created by entering into a fire hazard reduction agreement with the department and by posting a bond to the state in such form and for such amount as may be prescribed by the department, conditioned upon full and faithful compliance with all requirements under this part and the faithful reduction or management of the fire hazard in the manner prescribed by law and by rules adopted by the board.

(2) The bond shall be released upon completion of the work done in compliance with the terms of the agreement.

History: En. Sec. 1, Ch. 207, L. 1959; amd. Sec. 27, Ch. 253, L. 1974; amd. Sec. 2, Ch. 522, L. 1975; R.C.M. 1947, 28-404.

76-13-409. Duty of purchaser to insure compliance. (1) The initial purchaser of forest products which have been cut or are about to be cut from any private lands within the state shall, before making the purchase or contract to purchase, determine that the person engaged or about to engage in the cutting of these forest products has provided for the reduction or management of the fire hazard thus created, as provided in this part.

(2) When the hazard reduction agreement provides that the purchaser of forest products shall withhold moneys to insure faithful compliance with this part, the purchaser shall transmit all moneys which are withheld to the department on or before the 15th day of each month, clearly identifying by number the hazard reduction agreement to which the withheld moneys pertain. The purchaser shall keep accurate records of the purchase and the amounts withheld, which may be inspected by the department at any reasonable time.

(3) Upon the department making the determination that faithful compliance with this part has been achieved, the department shall return to the owner thereof all such withheld money with the exception of 4% for inspection, administration, enforcement, and smoke management.

History: En. Sec. 3, Ch. 207, L. 1959; amd. Sec. 29, Ch. 253, L. 1974; amd. Sec. 4, Ch. 522, L. 1975; R.C.M. 1947, 28-406; amd. Sec. 3, Ch. 670, L. 1979.

76-13-410. Failure to comply. (1) If a person fails, refuses, or neglects to properly dispose of slash in accordance with the requirements of 76-13-407 and 76-13-408 and is engaged or is about to engage, either for himself or for another, in cutting timber or other forest products and thereby creates a fire hazard, he may be enjoined from further timber harvesting operations until 76-13-407 and 76-13-408 have been complied with. The department may initiate the proceedings and may obtain a temporary restraining order, injunction, or writ of mandate. The proceedings shall be conducted in the district court of the county where the land is located.

(2) If a person fails to comply with 76-13-407 or 76-13-408 and has cut any forest products and fails to comply within 30 days after being notified to do so by the department, the department may complete, direct, or authorize the disposal of the slash at the expense of the owner of the timber or other forest products cut or produced from the land upon which the undisposed of fire hazard remains.

(3) The cost and expense of the disposal, plus 20% of the cost and expense of the disposal as a penalty, constitutes a lien upon the forest products so cut or produced from the land. If payment of the sum demanded is not made to the department within 10 days of its written demand, the department shall bring legal action on behalf of the state to recover the debt.

History: En. Sec. 4, Ch. 207, L. 1959; amd. Sec. 30, Ch. 253, L. 1974; amd. Sec. 5, Ch. 522, L. 1975; R.C.M. 1947, 28-407(1) thru (3); amd. Sec. 4, Ch. 670, L. 1979.

76-13-411. Certification of clearance. (1) A person who has entered into a contract with the department for the reduction or management of any fire hazard, upon payment of the contract price in accordance with the terms of the contract and the full compliance with the terms of the contract by the person, shall be granted a certification of clearance by the department and be relieved of any and all further liability and responsibility for the removal or reduction of the fire hazard. The department may require that a cash bond, equivalent to the contract price and conditioned upon the faithful performance of the contract, be deposited by the person with the department.

(2) The department shall not file for record any lien against the property of any person who has been issued a certification of compliance with 76-13-408 and 76-13-409 covering the property.

History: (1)En. Sec. 9, Ch. 207, L. 1959; amd. Sec. 3, Ch. 147, L. 1971; amd. Sec. 34, Ch. 253, L. 1974; amd. Sec. 8, Ch. 522, L. 1975; Sec. 28-412, R.C.M. 1947; (2)En. Sec. 4, Ch. 207, L. 1959; amd. Sec. 30, Ch. 253, L. 1974; amd. Sec. 5, Ch. 522, L. 1975; Sec. 28-407, R.C.M. 1947; R.C.M. 1947, 28-407(4), 28-412.

76-13-412. Violations. A person convicted of violating this part is guilty of a misdemeanor and shall be fined not less than $100 or more than $1,000.

History: En. 28-413 by Sec. 9, Ch. 522, L. 1975; R.C.M. 1947, 28-413.

76-13-413. Failure to submit withholding — remedy. (1) If a purchaser does not submit withheld money on or before the 15th day of each month when required to do so under 76-13-409, he must be notified by registered or certified mail that he is in noncompliance and be given 15 days to submit all money then due. If he fails to submit all money due within the required time, the department may initiate proceedings to enjoin further processing of all wood products until all money due is paid in full or satisfactory arrangements for payments are made.

(2) If payment is not made within the 15-day period after notification as provided in subsection (1), a penalty of 5% of the amount due must be assessed. The department may abate the penalty if the purchaser establishes that the failure to submit the amount due as required was due to reasonable cause and was not due to neglect on his part. The department, in addition to the penalty, may impose interest at the rate of 10% a year on any balance remaining unpaid.

History: En. Sec. 5, Ch. 670, L. 1979; amd. Sec. 1, Ch. 115, L. 1981.

Compiler's Comments

1981 Amendment: Changed "76-13-407" to "76-13-409" near the beginning of (1).

Part 5

Portable Sawmills on Forest Lands

76-13-501. Definitions. Unless the context requires otherwise, in this part the following definitions apply:

(1) "Department" means the department of state lands provided for in Title 2, chapter 15, part 32.

(2) "Portable sawmill" means a sawmill located upon forest land within the state and having a rated capacity of less than 5,000 feet per hour of operation.

History: En. 28-801 by Sec. 106, Ch. 253, L. 1974; R.C.M. 1947, 28-801; amd. Sec. 1, Ch. 529, L. 1981.

Compiler's Comments

1981 Amendment: Changed the definition of "Department" from "the department of natural resources provided for in Title 2, chapter 15, part 33" to "the department of state lands provided for in Title 2, chapter 15, part 32".

Severability: Section 9, Ch. 529, L. 1981, was a severability section.

Effective Date: Section 11, Ch. 529, L. 1981, provided: "This act is effective July 1, 1981."

76-13-502. Portable sawmill license required. It is unlawful to operate a portable sawmill located upon forest lands within the state without first obtaining a license therefor from the department.

History: En. Sec. 1, Ch. 124, L. 1931; re-en. Sec. 1839.1, R.C.M. 1935; Sec. 81-1501, R.C.M. 1947; amd. and redes. 28-802 by Sec. 107, Ch. 253, L. 1974; R.C.M. 1947, 28-802.

76-13-503. Application for license — fee. (1) Whenever a person, firm, or corporation desires to commence the operation of a portable sawmill located or to be located upon forest lands within the state, that person, firm, or corporation shall apply to the department in writing for a license to operate the portable sawmill. The application shall include the name of the person, firm, or corporation contemplating the operation of the sawmill; the location thereof by section, township, and range numbers; the rated capacity of the sawmill and the approximate amount of stumpage to be cut at the proposed setting; and the approximate date desired for the commencement of the operation.

(2) The application shall be accompanied by the payment of a fee of $2, which is fixed as the license fee for the operation of any portable sawmill, to be credited to the federal and private grant clearance fund.

History: En. Sec. 2, Ch. 124, L. 1931; re-en. Sec. 1839.2, R.C.M. 1935; amd. Sec. 2, Ch. 248, L. 1965; Sec. 81-1502, R.C.M. 1947; amd. and redes. 28-803 by Sec. 108, Ch. 253, L. 1974; R.C.M. 1947, 28-803.

76-13-504. Issuance of license — term. Upon the receipt of the application and the payment of the fee, the department shall issue a license to the person, firm, or corporation applying therefor. The license shall be upon a form provided by the department and shall cover such period as the sawmill remains in continuous operation on a single setting or location or until revocation by the department.

History: En. Sec. 3, Ch. 124, L. 1931; re-en. Sec. 1839.3, R.C.M. 1935; Sec. 81-1503, R.C.M. 1947; amd. and redes. 28-804 by Sec. 109, Ch. 253, L. 1974; R.C.M. 1947, 28-804.

76-13-505. Revocation of license. Whenever it appears that there is a violation of any law of the state enacted for the protection of forest and forest lands in connection with the operation of a portable sawmill or in the protection of the lands from which the timber sawed or to be sawed at a mill is cut, the department may revoke the license and thereby suspend the operation of a sawmill until the conditions constituting a violation of law are remedied and removed.

History: En. Sec. 4, Ch. 124, L. 1931; re-en. Sec. 1839.4, R.C.M. 1935; Sec. 81-1504, R.C.M. 1947; amd. and redes. 28-805 by Sec. 110, Ch. 253, L. 1974; R.C.M. 1947, 28-805.

76-13-506. Penalty. A person, firm, or corporation violating this part is guilty of a misdemeanor and shall be fined not less than $25 or more than $500, which fines are to be credited to the general school funds of the state.

History: En. Sec. 6, Ch. 124, L. 1931; re-en. Sec. 1839.6, R.C.M. 1935; Sec. 81-1506, R.C.M. 1947; amd. and redes. 28-806 by Sec. 111, Ch. 253, L. 1974; R.C.M. 1947, 28-806(part).

76-13-507. Effect on liability for fire. This part shall not be construed to in any manner affect the civil liability of any person in connection with the origin or spread of fire in the forest lands of the state.

History: En. Sec. 6, Ch. 124, L. 1931; re-en. Sec. 1839.6, R.C.M. 1935; Sec. 81-1506, R.C.M. 1947; amd. and redes. 28-806 by Sec. 111, Ch. 253, L. 1974; R.C.M. 1947, 28-806(part).

Part 6

Transportation of Coniferous Trees

76-13-601. Unlawful transportation of trees. (1) No person may transport on the highways of this state more than 10 coniferous trees without having in his possession a bill of sale showing his ownership of the trees. The bill of sale shall specify:

(a) the date of its execution;

(b) the name and address of the vendor or donor of the trees;

(c) the name and address of the vendee or donee of the trees;

(d) the number of trees, by species, sold or transferred by the bill of sale; and

(e) the shipping yards or the property from which the trees were taken.

(2) Subsection (1) does not apply to:

(a) the transportation of trees with their roots intact;

(b) the transportation of logs, poles, pilings, or other forest products from which substantially all the limbs and branches have been removed;

(c) the transportation of coniferous trees by the owner of the land from which they were taken or his agent, provided that agent has in his possession a tax receipt or other evidence indicating the section, township, and range from which the trees were harvested;

(d) the transportation of coniferous trees by a common carrier.

(3) A person who violates this section shall be punished by a fine not to exceed $500 or imprisonment not to exceed 6 months, or both.

History: En. Sec. 1, Ch. 133, L. 1981.

Compiler's Comments

1981 Title: The title to Ch. 133, L. 1981 (HB 195), read: "An act to prohibit transport on the highways of the state of more than 10 coniferous trees without a bill of sale; and providing a penalty."

CHAPTER 14

RANGELAND RESOURCES

Part 1 — Rangeland Management

Section
76-14-101. Short title.
76-14-102. Purpose.

76-14-103. Definitions.
76-14-104. Types of land included as rangeland.
76-14-105. Role of state coordinator.
76-14-106. Duties of rangeland resources committee.

Part 1

Rangeland Management

76-14-101. Short title. This part shall be known as the "Montana Rangeland Resources Act".

History: En. 76-301 by Sec. 1, Ch. 408, L. 1977; R.C.M. 1947, 76-301.

76-14-102. Purpose. The purpose of this part is to establish a program of rangeland management whereby:

(1) the importance of Montana's rangeland with respect to livestock, forage, wildlife habitat, high-quality water production, pollution control, erosion control, recreation, and the natural beauty of the state is recognized;

(2) cooperation and coordination of range management activities between persons and organizations charged with or having the management of rangeland, whether private or public, can be promoted and developed; and

(3) those who are doing exceptional work in range management can receive appropriate recognition.

History: En. 76-302 by Sec. 2, Ch. 408, L. 1977; R.C.M. 1947, 76-302.

76-14-103. Definitions. As used in this part, the following definitions apply:

(1) "Committee" means the Montana rangeland resources committee selected as provided in 2-15-3305(2).

(2) "Department" means the department of natural resources and conservation.

(3) "Grazeable woodlands" means forest land on which the understory includes, as an integral part of the forest plant community, plants that can be grazed without significantly impairing other forest values.

(4) "Montana rangeland resource program" means the rangeland resource program administered by the conservation districts division of the department of natural resources and conservation in concert with the Montana conservation districts law and the Grass Conservation Act to maintain and enhance the rangeland resources of the state.

(5) "Rangeland" means land on which the native vegetation (climax or natural potential) is predominantly grasses, grasslike plants, forbs, or shrubs suitable for grazing or browsing use.

(6) "Range management" means a distinct discipline founded on ecological principles and dealing with the husbandry of rangelands and range resources.

(7) "State coordinator" means the state coordinator for the Montana Rangeland Resources Act provided for in 2-15-3304.

(8) "Users of rangeland" means all persons, including but not limited to ranchers, farmers, sportsmen, recreationists, and others appreciative of the functional, productive, aesthetic, and recreational uses of rangelands.

History: (1) thru (6), (8)En. 76-303 by Sec. 3, Ch. 408, L. 1977; Sec. 76-303, R.C.M. 1947; (7)En. by Code Commissioner, 1979; R.C.M. 1947, 76-303(part).

76-14-104. Types of land included as rangeland. The term "rangeland" includes lands revegetated naturally or artifically to provide a forage cover that is managed like native vegetation. Rangelands include natural grasslands, savannahs, shrublands, most deserts, tundra, alpine communities, coastal marshes, and wet meadows.

History: En. 76-303 by Sec. 3, Ch. 408, L. 1977; R.C.M. 1947, 76-303(part).

76-14-105. Role of state coordinator. The state coordinator shall:

(1) serve as an advisor, counselor, and coordinator for and between persons and agencies involved in range management;

(2) strive to create understanding and compatibility between the many users of rangeland, including sportsmen, recreationists, ranchers, and others;

(3) promote and coordinate the adoption and implementation of sound range management plans to minimize conflicts between governmental agencies and private landowners;

(4) participate in zoning and planning studies to insure that native ranges are adequately represented at sessions for development of zoning and planning regulations;

(5) coordinate range management research to help prevent duplication and overlap of effort in this area.

History: En. 76-304 by Sec. 4, Ch. 408, L. 1977; R.C.M. 1947, 76-304(2).

76-14-106. Duties of rangeland resources committee. The committee shall:

(1) review and recommend annual and long-range work programs;

(2) suggest priorities of work;

(3) provide advice and counsel to the coordinator for carrying out the rangeland resource program.

History: En. 76-307 by Sec. 7, Ch. 408, L. 1977; R.C.M. 1947, 76-307.

CHAPTER 15

CONSERVATION DISTRICTS

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Part 1

General Provisions

76-15-101. Legislative determinations. It is hereby declared, as a matter of legislative determination:

(1) that the farm and grazing lands of the state of Montana are among the basic assets of the state and that the preservation of these lands is necessary to protect and promote the health, safety, and general welfare of its people; that improper land use practices have caused and have contributed to and are now causing and contributing to a progressively more serious erosion of the farm and grazing lands of this state by wind and water; that the breaking of natural grass, plant, and forest cover has interfered with the natural factors of soil stabilization, causing loosening of soil and exhaustion of humus and developing a soil condition that favors erosion; that the topsoil is being blown and washed out of fields and pastures; that there has been an accelerated washing of sloping fields; that these processes of erosion by wind and water speed up with removal of absorptive topsoil, causing exposure of less absorptive and less protective but more erosive subsoil; that failure by any land occupier to conserve the soil and control erosion upon his lands causes a washing and blowing of soil and water from his lands onto other lands and makes the conservation of soil and control of erosion on such other lands difficult or impossible;

(2) that the consequences of such soil erosion in the form of soil blowing and soil washing are the silting and sedimentation of stream channels, reservoirs, dams, and ditches; the loss of fertile soil material in dust storms; the piling up of soil on lower slopes and its deposit over alluvial plains; the reduction in productivity or outright ruin of rich bottom lands by overwash of poor subsoil material, sand, and gravel swept out of the hills; deterioration of soil and its fertility, deterioration of crops and range cover grown thereon, and declining acre yields despite development of scientific processes for increasing such yields; loss of soil and water which causes destruction of food and cover for wildlife; a blowing and washing of soil into streams which silts over spawning beds and destroys water plants, diminishing the food supply of fish; a diminishing of the underground water reserve, which causes water shortages, intensifies periods of drought, and causes crop and range vegetation cover failures; and increase in the speed and volume of rainfall runoff, causing severe and increasing floods which bring suffering, disease, and death; impoverishment of families attempting to operate eroding and eroded

lands; damage to roads, highways, railways, farm buildings, and other property from floods and from dust storms; and losses in municipal water supply, irrigation developments, farming, and grazing;

(3) that to conserve soil resources and control and prevent soil erosion and prevent floodwater and sediment damages and further the conservation, development, utilization, and disposal of water, it is necessary that land use practices contributing to soil wastage and soil erosion be discouraged and discontinued and appropriate soil-conserving land use practices and works of improvement for flood prevention and the conservation, development, utilization, and disposal of water be adopted and carried out; that among the procedures necessary for widespread adoption are the carrying on of engineering operations such as the construction of water spreaders, terraces, terrace outlets, check dams, desilting basins, floodwater retarding structures, channel improvements, floodways, land drainage, dikes, ponds, ditches, and the like; the utilization of strip cropping, lister furrowing, contour cultivating, and contour furrowing; land drainage; land irrigation; seeding and planting of waste, sloping, abandoned, or eroded lands to water-conserving and erosion-preventing plants, trees, and grasses; forestation and reforestation; rotation of crops, restriction of number of livestock grazed, deferred grazing, rodent eradication; soil stabilization with trees, grasses, legumes, and other thick-growing, soil-holding crops; retardation of runoff by increasing absorption of rainfall; and retirement from cultivation of steep, highly erosive areas and areas now badly gullied or otherwise eroded.

History: En. Sec. 2, Ch. 72, L. 1939; amd. Sec. 1, Ch. 5, L. 1959; R.C.M. 1947, 76-102(A) thru (C).

76-15-102. Declaration of policy. It is hereby declared to be the policy of the legislature to provide for the conservation of soil and soil resources of this state, for the control and prevention of soil erosion, for the prevention of floodwater and sediment damages, and for furthering the conservation, development, utilization, and disposal of water and thereby to preserve natural resources, control floods, prevent impairment of dams and reservoirs, preserve wildlife, protect the tax base, protect public lands, and protect and promote the health, safety, and general welfare of the people of this state.

History: En. Sec. 2, Ch. 72, L. 1939; amd. Sec. 1, Ch. 5, L. 1959; R.C.M. 1947, 76-102(D).

76-15-103. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Agency of this state" includes the government of this state and any subdivision, agency, or instrumentality, corporate or otherwise, of the government of this state.

(2) "Board" means the board of natural resources and conservation provided for in 2-15-3302.

(3) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(4) "District" or "conservation district" means a governmental subdivision of this state and a public body corporate and politic organized in accordance with this chapter, for the purposes, with the powers, and subject to the restrictions hereinafter set forth.

(5) "Due notice" means notice published at least twice, with an interval of at least 14 days between the two publication dates, in a newspaper or other publication of general circulation within the proposed area or by posting at a reasonable number of conspicuous places within the appropriate area, the posting to include, where possible, posting at public places where it may be customary to post notices concerning county or municipal affairs generally.

(6) "Government" or "governmental" includes the government of this state, the government of the United States, and any subdivision, agency, or instrumentality, corporate or otherwise, of either of them.

(7) "Land occupier" or "occupier of land" includes a person, firm, corporation, municipality, or other entity who holds title to or is in possession of lands lying within a district organized under this chapter, whether as owner, lessee, renter, tenant, or otherwise.

(8) "Petition" means a petition filed under 76-15-201 for the creation of a district.

(9) "Qualified elector" means an elector as defined in Title 13.

(10) "Supervisor" means one of the members of the governing body of a district, elected or appointed in accordance with this chapter.

(11) "United States" or "agencies of the United States" includes the United States of America, the soil conservation service of the United States department of agriculture, and any other agency or instrumentality, corporate or otherwise, of the United States of America.

History: En. Sec. 3, Ch. 72, L. 1939; amd. Sec. 2, Ch. 73, L. 1961; amd. Sec. 1, Ch. 146, L. 1967; amd. Sec. 2, Ch. 431, L. 1971; amd. Sec. 88, Ch. 253, L. 1974; R.C.M. 1947, 76-103(part); amd. Sec. 393, Ch. 571, L. 1979.

76-15-104. Adjournment of hearings. At any hearing held pursuant to the notice, at the time and place designated in the notice, adjournment may be made from time to time without the necessity of renewing the notice for the adjourned dates.

History: En. Sec. 3, Ch. 72, L. 1939; amd. Sec. 2, Ch. 73, L. 1961; amd. Sec. 1, Ch. 146, L. 1967; amd. Sec. 2, Ch. 431, L. 1971; amd. Sec. 88, Ch. 253, L. 1974; R.C.M. 1947, 76-103(part).

76-15-105. Duties of department. In addition to the duties hereinafter conferred upon the department, it shall:

(1) offer assistance as may be appropriate to the supervisors of conservation districts in the carrying out of their powers and programs;

(2) keep the supervisors of each of the several districts informed of the activities and experiences of all other districts and facilitate an interchange of advice and experiences between the districts and cooperation between them;

(3) coordinate the programs of the several conservation districts hereunder so far as this may be done by advice and consultation;

(4) secure the cooperation and assistance of the United States and of agencies of this state in the work of the districts;

(5) disseminate information throughout the state concerning the activities and programs of the conservation districts; and

(6) encourage the formation of districts in areas where their organization is desirable.

History: En. Sec. 4, Ch. 72, L. 1939; amd. Sec. 1, Ch. 21, L. 1951; amd. Sec. 1, Ch. 47, L. 1967; amd. Sec. 1, Ch. 291, L. 1969; amd. Sec. 3, Ch. 431, L. 1971; amd. Sec. 89, Ch. 253, L. 1974; R.C.M. 1947, 76-104.

Part 2

Creation of Conservation Districts

76-15-201. Petition to create conservation district. (1) Any 10 qualified electors within the limits of the territory proposed to be organized into a district may file a petition with the department asking that the board approve the organization of a conservation district to function in the territory described in the petition.

(2) The petition shall set forth:

(a) the proposed name of the district;

(b) that there is need in the interest of the public health, safety, and welfare for a conservation district to function in the territory described in the petition;

(c) a description of the territory proposed to be organized as a district, which description may not be required to be given by metes and bounds or by legal subdivisions but shall be considered sufficient if generally accurate;

(d) a request that the board duly define the boundaries for the district; that a referendum be held within the territory so defined on the question of the creation of a conservation district in the territory; and that the board determine that a district be created.

(3) Where more than one petition is filed covering parts of the same territory, the board may consolidate all or any part of the petitions.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(1), (2).

76-15-202. Hearing on petition. (1) Within 30 days after a petition has been filed with the department, it shall cause due notice to be given of a proposed hearing before the department upon the question of the desirability and necessity in the interest of the public health, safety, and welfare of the creation of the district; upon the question of the appropriate boundaries to be assigned to the district; upon the propriety of the petition and other proceedings taken under this chapter; and upon all questions relevant to those inquiries.

(2) All qualified electors within the limits of the territory described in the petition and of lands within any territory considered for addition to the described territory and all other interested parties are entitled to attend the hearings and be heard.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(part).

76-15-203. Hearing procedure if additional territory to be included. If it appears to the board after reviewing the record of the hearing that it may be desirable to include within the proposed district territory outside of the area within which due notice of the hearing has been given, the board shall adjourn the hearing and the department shall cause due notice of a further hearing to be given throughout the entire area considered for inclusion in the district, and the further hearing shall be held by the department.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(part).

76-15-204. Board determination of need for district. (1) After the hearing, if the board determines, upon the facts presented at the hearing and upon other relevant facts and information as may be available to the department or the board, that there is need, in the interest of the public health, safety, and welfare, for a conservation district to function in the territory considered at the hearing, it shall make and record that determination and shall define, by metes and bounds or by legal subdivisions, the boundaries of the district.

(2) If the board determines after the hearing, after due consideration of the relevant facts, that there is no need for a conservation district to function in the territory considered at the hearing, it shall make and record that determination and shall deny the petition. After 6 months have expired from the date of the denial of a petition, subsequent petitions covering the same or substantially the same territory may be filed and a new hearing held and determinations made thereon.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(part).

76-15-205. Criteria for determining need. In making the determinations and in defining the boundaries, the board shall consider the topography of the area considered and of the state, the composition of soils therein, the distribution of erosion, the prevailing land use practices, the desirability and necessity of including within the boundaries the particular lands under consideration and the benefits those lands may receive from being included within the boundaries, the relation of the proposed area to existing watersheds and agricultural regions and other conservation districts already organized or proposed for organization under this chapter, and such other physical, geographical, and economic factors as are relevant, having due regard to the legislative determination set forth in 76-15-101 and 76-15-102. The territory to be included within the boundaries need not be contiguous.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(part).

76-15-206. Determination of administrative practicability of district. After the board has made and recorded a determination that there is need in the interest of the public health, safety, and welfare for the organization of a district in a particular territory and has defined the boundaries thereof, it shall consider the question whether the operation of a district within the boundaries with the powers conferred upon conservation districts in this chapter is administratively practicable and feasible.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(part).

76-15-207. Referendum on question of creating district. (1) To assist the board in the determination of this administrative practicability and feasibility, the department shall, within a reasonable time after entry of the board's finding that there is need for the organization of the proposed district and the determination of the boundaries thereof, hold a referendum within the proposed district upon the proposition of the creation of the district and cause due notice of the referendum to be given.

(2) The question shall be submitted by ballots upon which the words "For creation of a conservation district of the lands below described and lying in the county(ies) of ...., ..., and ...." and "Against creation of a conservation district of the lands below described and lying in the county(ies) of .... and ...." shall appear, with a square before each proposition and a direction to insert an "X" mark in the square before one or the other of the propositions as the voter may favor or oppose creation of the district. The ballot shall set forth the boundaries of the proposed district as determined by the board.

(3) All qualified electors within the boundaries of the territory, as determined by the department, are eligible to vote in the referendum.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(part).

76-15-208. Administration of hearings and referenda. (1) The department shall pay all expenses for the issuance of the notices and the conduct of the hearings and referenda and shall supervise the conduct of the hearings and referenda. It shall adopt appropriate rules governing the conduct of the hearings and referenda and providing for the registration prior to the date of the referendum of all eligible voters or prescribing some other appropriate procedure for the determination of those eligible as voters in the referendum.

(2) No informalities in the conduct of the referendum or in any matters relating thereto shall invalidate the referendum or the result thereof if notice thereof has been given substantially as herein provided and the referendum has been fairly conducted.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(5).

76-15-209. Board procedure following referendum. (1) The department shall publish the result of the referendum, and the board shall thereafter consider and determine whether the operation of the district within the defined boundaries is administratively practicable and feasible.

(2) If the board determines that the operation of the district is administratively practicable and feasible, it shall record that determination and proceed with the organization of the district in the manner hereinafter provided.

(3) If the board determines that the operation of the district is not administratively practicable and feasible, it shall record that determination and deny the petition. After 6 months have expired from the date of entry of a determination by the board that operation of a proposed district is not administratively practicable and feasible and denial of a petition pursuant to the determination, subsequent petitions may be filed and action taken thereon in accordance with this part.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(part).

76-15-210. Criteria for determining administrative practicability. (1) In making its determination, the board shall consider the attitudes of the qualified electors within the defined boundaries, the number of qualified electors eligible to vote in the referendum who voted, the proportion of the votes cast in the referendum in favor of the creation of the district to the total number of votes cast, the approximate wealth and income of the qualified electors of the proposed district, the probable expense of carrying on erosion-control operations within the district, and such other economic and social factors relevant to the determination, having due regard to the legislative determinations set forth in 76-15-101 and 76-15-102.

(2) However, the board may not determine that the operation of the proposed district within the defined boundaries is administratively practicable and feasible unless a majority of the votes cast in the referendum upon the proposition of creation of the district has been cast in favor of the creation of the district.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(part).

76-15-211. Appointment of supervisors. If the board determines that the operation of the proposed district within the defined boundaries is administratively practicable and feasible, it shall appoint two supervisors to act with the three supervisors first elected, as provided hereinafter, as the initial governing body of the district.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(part).

76-15-212. Submission of application by appointed supervisors. The district is a governmental subdivision of this state and a public body, corporate and politic, upon the taking of the following proceedings:

(1) The two appointed supervisors shall present to the secretary of state an application signed by them, which shall set forth:

(a) that a petition for the creation of the district was filed with the department pursuant to this chapter, that the proceedings specified in this chapter were taken pursuant to the petition, that the application is being filed in order to complete the organization of the district as a governmental subdivision and a public body, corporate and politic, under this chapter, and that the board has appointed them as supervisors;

(b) the name and official residence of each of the supervisors, together with a certified copy of the appointments evidencing their right to office;

(c) the term of office of each of the supervisors;

(d) the name which is proposed for the district; and

(e) the location of the principal offices of the supervisors of the district.

(2) The application shall be subscribed and sworn to by each of the supervisors.

(3) The application shall be accompanied by a statement by the department which shall certify that a petition was filed, notice issued, and hearing held as provided in this part; that the board determined that there is need in the interest of the public health, safety, and welfare for a conservation district to function in the proposed territory and defined the boundaries thereof; that notice was given and a referendum held on the question of the creation of the district; and that the result of the referendum showed a majority of the votes cast in the referendum to be in favor of the creation of the district and that thereafter the board determined that the operation of the proposed district is administratively practicable and feasible. The

statement shall also set forth the boundaries of the district as they have been defined by the board.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(part).

76-15-213. Processing of application by secretary of state. (1) The secretary of state shall examine the application and statement, and if he finds that the name proposed for the district is not identical with that of any other conservation district of this state or so nearly similar as to lead to confusion or uncertainty, he shall receive and file them and shall record them in an appropriate book of record in his office.

(2) If the secretary of state finds that the name proposed for the district is identical with that of any other conservation district of this state or so nearly similar as to lead to confusion and uncertainty, he shall certify that fact to the board, which shall thereupon submit to the secretary of state a new name for the district which is not subject to such defects. Upon receipt of the new name free of such defects, the secretary of state shall record the application and statement with the name so modified in an appropriate book of record in his office.

(3) The secretary of state shall make and issue to the supervisors without cost a certificate under the seal of the state of the due organization of the district and shall record the certificate with the application and statement.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(part).

76-15-214. Evidentiary status of certificate issued by secretary of state. In a suit, action, or proceeding involving the validity or enforcement of or relating to a contract, proceeding, or action of the district, the district shall be considered to have been established in accordance with this chapter upon proof of the issuance of the certificate by the secretary of state. A copy of the certificate, duly certified by the secretary of state, is admissible in evidence in the suit, action, or proceeding and is proof of the filing and contents thereof.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(11).

76-15-215. District as governmental subdivision and public body. When the application and statement have been made, filed, and recorded as herein provided, the district is a governmental subdivision of this state and a public body, corporate and politic, exercising public powers.

History: Ap. p. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; Sec. 76-105, R.C.M. 1947; Ap. p. Sec. 8, Ch. 72, L. 1939; amd. Sec. 2, Ch. 5, L. 1959; amd. Sec. 2, Ch. 291, L. 1969; amd. Sec. 7, Ch. 431, L. 1971; amd. Sec. 2, Ch. 75, L. 1975; amd. Sec. 1, Ch. 395, L. 1977; Sec. 76-108, R.C.M. 1947; R.C.M. 1947, 76-105(part), 76-108(part).

76-15-216. Limitation on territory included in district. The boundaries of the district shall include the territory as determined by the board, but they may not include any area included within the boundaries of another conservation district.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(part).

Part 3

Administration of Conservation Districts

76-15-301. Establishment of supervisor areas. The conservation district is authorized to divide the unincorporated area of the district into five supervisor areas.

History: **En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(12).**

76-15-302. Nominations for supervisor. (1) Within 30 days after the date of issuance of a certificate of organization of a conservation district by the secretary of state, nominating petitions may be filed with the registrar, as defined in Title 13, to nominate candidates for supervisors of the district. A nominating petition may not be accepted by the registrar unless it is subscribed by 10 or more qualified electors within the boundaries of the district or supervisor areas thereof wherein the nominee resides. Qualified electors may sign more than one nominating petition to nominate more than one candidate for supervisor.

(2) If more than six candidates are nominated, the registrar shall give due notice of a nominating election to be held for the selection of six candidates for supervisor to appear on the next general election ballot. This nominating election may be held in conjunction with the state primary election.

History: **En. Sec. 6, Ch. 72, L. 1939; amd. Sec. 5, Ch. 431, L. 1971; amd. Sec. 91, Ch. 253, L. 1974; amd. Sec. 2, Ch. 18, L. 1977; R.C.M. 1947, 76-106(part).**

76-15-303. General election. (1) All qualified electors within the district are eligible to vote in the election.

(2) The three candidates who receive the largest number, respectively, of the votes cast in the election are the elected supervisors for the district.

(3) In the general election, the names of all individuals nominated by petition (if six or fewer) or by election shall be printed, arranged in a rotating order of the surnames, as provided under 13-12-205, upon ballots, with a square before each name and a direction to insert an "X" mark in the square before any three names to indicate the elector's preference.

(4) The election administrator in each county shall prepare suitable nonpartisan ballots or place the names of candidates on the regular general election ballot in the same manner as other nonpartisan candidates for the election of supervisors, which ballots shall be delivered to the election judges in those precincts which contain registered electors prior to each general election and each primary election in which more than four candidates are nominated. The election judges and other election officials in such precincts shall submit such ballots to qualified electors, conduct the election, and tabulate the results of such election in the manner provided in Title 13.

History: **En. Sec. 6, Ch. 72, L. 1939; amd. Sec. 5, Ch. 431, L. 1971; amd. Sec. 91, Ch. 253, L. 1974; amd. Sec. 2, Ch. 18, L. 1977; R.C.M. 1947, 76-106(part); amd. Sec. 369, Ch. 571, L. 1979.**

Compiler's Comments

Transition. Sec. 404, Ch. 571, L. 1979, is a transition section, the text of which may be found in the compiler's comment to 13-1-104.

76-15-304. Election of supervisors. (1) Two supervisors shall be elected at the second general election following the organization or reorganization of the district and shall replace the two supervisors appointed by the department. Thereafter, a district shall alternately elect three and two supervisors at succeeding general elections.

(2) Nominations for the election of supervisors shall be made as provided under 76-15-302 except that a nominating election shall be held if more than four candidates are nominated by petition when two supervisors are to be elected.

History: En. Sec. 6, Ch. 72, L. 1939; amd. Sec. 5, Ch. 431, L. 1971; amd. Sec. 91, Ch. 253, L. 1974; amd. Sec. 2, Ch. 18, L. 1977; R.C.M. 1947, 76-106(2).

76-15-305 through 76-15-310 reserved.

76-15-311. Governing body of district. (1) If there are no incorporated municipalities within the boundaries of the district, the governing body of the district shall consist of five elected supervisors.

(2) If there are incorporated municipalities within the boundaries of the district, the governing body of the district shall consist of seven supervisors as follows:

(a) The board of supervisors, in addition to five elected supervisors, shall consist of two appointed supervisors, making a total of seven supervisors in such districts. The two appointed supervisors must be residents of municipalities within the district. The legislative bodies of the incorporated municipalities within the district shall appoint the two additional supervisors after consultation with the elected supervisors. The term of office of the appointed supervisors shall be 3 years.

(b) Where there are more than two incorporated municipalities within a district, the two appointed supervisors shall represent all the municipalities and urban interests in the district and no municipality shall have more than one appointed supervisor residing therein.

History: En. Sec. 7, Ch. 72, L. 1939; amd. Sec. 1, Ch. 4, L. 1959; amd. Sec. 2, Ch. 146, L. 1967; amd. Sec. 6, Ch. 431, L. 1971; amd. Sec. 1, Ch. 58, L. 1973; amd. Sec. 92, Ch. 253, L. 1974; amd. Sec. 52, Ch. 439, L. 1975; amd. Sec. 3, Ch. 18, L. 1977; R.C.M. 1947, 76-107(1) thru (3); amd. Sec. 17, Ch. 266, L. 1979.

76-15-312. Term of office and vacancies. (1) The term of office of each supervisor shall be 4 years, except that the supervisors who are first appointed by the department shall be designated to serve for terms of 2 years from the date of their appointment. An elected supervisor shall hold office until his successor has been elected and has qualified.

(2) Any vacancy occurring in the office of an elected supervisor shall be filled by appointment by the remaining supervisors until the next regular election, when a successor shall be elected to serve the unexpired term.

History: En. Sec. 7, Ch. 72, L. 1939; amd. Sec. 1, Ch. 4, L. 1959; amd. Sec. 2, Ch. 146, L. 1967; amd. Sec. 6, Ch. 431, L. 1971; amd. Sec. 1, Ch. 58, L. 1973; amd. Sec. 92, Ch. 253, L. 1974; amd. Sec. 52, Ch. 439, L. 1975; amd. Sec. 3, Ch. 18, L. 1977; R.C.M. 1947, 76-107(part).

76-15-313. Operation of supervisors. (1) The supervisors shall annually elect a chairman from their members.

(2) A majority of the supervisors constitute a quorum, and the concurrence of a majority in any matter within their duties is required for its determination.

(3) Except for special projects in which funds are available, a supervisor may not receive compensation for his services, but he is entitled to expenses, including travel expenses as provided for in 2-18-501 through 2-18-503, incurred in the discharge of his duties.

History: En. Sec. 7, Ch. 72, L. 1939; amd. Sec. 1, Ch. 4, L. 1959; amd. Sec. 2, Ch. 146, L. 1967; amd. Sec. 6, Ch. 431, L. 1971; amd. Sec. 1, Ch. 58, L. 1973; amd. Sec. 92, Ch. 253, L. 1974; amd. Sec. 52, Ch. 439, L. 1975; amd. Sec. 3, Ch. 18, L. 1977; R.C.M. 1947, 76-107(part); amd. Sec. 2, Ch. 533, L. 1979.

76-15-314. Removal of a supervisor. A supervisor may be removed by the board, upon notice and hearing, for neglect of duty or malfeasance in office but for no other reason.

History: En. Sec. 7, Ch. 72, L. 1939; amd. Sec. 1, Ch. 4, L. 1959; amd. Sec. 2, Ch. 146, L. 1967; amd. Sec. 6, Ch. 431, L. 1971; amd. Sec. 1, Ch. 58, L. 1973; amd. Sec. 92, Ch. 253, L. 1974; amd. Sec. 52, Ch. 439, L. 1975; amd. Sec. 3, Ch. 18, L. 1977; R.C.M. 1947, 76-107(part).

76-15-315. Administrative functions of the supervisors. (1) The supervisors may employ a secretary and such other officers, agents, and employees, permanent and temporary, as they may require and shall determine their qualifications, duties, and compensation.

(2) The supervisors may delegate to their chairman, to one or more supervisors, or to one or more agents or employees such powers and duties as they consider proper.

(3) The supervisors shall furnish to the department copies of such ordinances, rules, orders, contracts, forms, and other documents as they adopt or employ and such other information concerning their activities as may be required in the performance of their duties under this chapter.

(4) The supervisors shall provide for the execution of surety bonds for all employees and officers who are entrusted with funds or property; shall provide for the keeping of a full and accurate record of all proceedings and of all resolutions, regulations, and orders issued or adopted; and shall provide for an annual audit of the accounts of receipts and disbursements.

History: En. Sec. 7, Ch. 72, L. 1939; amd. Sec. 1, Ch. 4, L. 1959; amd. Sec. 2, Ch. 146, L. 1967; amd. Sec. 6, Ch. 431, L. 1971; amd. Sec. 1, Ch. 58, L. 1973; amd. Sec. 92, Ch. 253, L. 1974; amd. Sec. 52, Ch. 439, L. 1975; amd. Sec. 3, Ch. 18, L. 1977; R.C.M. 1947, 76-107(part).

76-15-316. Cooperation with municipalities and counties. The supervisors may invite the governing body of any municipality or county located near the territory comprised within the district to designate a representative to advise and consult with the supervisors of the district on all questions of program and policy which may affect the property, water supply, or other interests of the municipality or county.

History: En. Sec. 7, Ch. 72, L. 1939; amd. Sec. 1, Ch. 4, L. 1959; amd. Sec. 2, Ch. 146, L. 1967; amd. Sec. 6, Ch. 431, L. 1971; amd. Sec. 1, Ch. 58, L. 1973; amd. Sec. 92, Ch. 253, L. 1974; amd. Sec. 52, Ch. 439, L. 1975; amd. Sec. 3, Ch. 18, L. 1977; R.C.M. 1947, 76-107(7).

76-15-317. Cooperation with state agencies. Agencies of this state which shall have jurisdiction over or be charged with the administration of any state-owned lands and of any county or other governmental subdivision of the state, which shall have jurisdiction over or be charged with the administration of any county-owned or other publicly owned lands lying within the boundaries of any district organized hereunder shall cooperate to the fullest extent with the supervisors of such districts in the effectuation of programs and operations undertaken by the supervisors under the provisions of this chapter. The supervisors of such districts shall be given free access to enter and perform work upon such publicly owned lands. The provisions of land use regulations adopted pursuant to 76-15-701 through 76-15-707 shall have the force and effect of law over all such publicly owned lands and shall be in all respects observed by the agencies administering such lands.

History: En. Sec. 13, Ch. 72, L. 1939; R.C.M. 1947, 76-113.

76-15-318. Cooperation between districts. The supervisors of any two or more districts organized under the provisions of this chapter may cooperate with one another in the exercise of any or all powers conferred in this chapter.

History: En. Sec. 12, Ch. 72, L. 1939; R.C.M. 1947, 76-112.

76-15-319. Legal assistance. (1) The supervisors may call upon the county attorney of the county in which the greatest portion of the district is located or the attorney general of the state for such legal services as they may require or may employ their own counsel and legal staff.

(2) If the county attorney is unable to provide legal assistance because of lack of staff or conflict of interest, then the matter may be referred to the attorney general or the department of natural resources and conservation.

History: En. Sec. 7, Ch. 72, L. 1939; amd. Sec. 1, Ch. 4, L. 1959; amd. Sec. 2, Ch. 146, L. 1967; amd. Sec. 6, Ch. 431, L. 1971; amd. Sec. 1, Ch. 58, L. 1973; amd. Sec. 92, Ch. 253, L. 1974; amd. Sec. 52, Ch. 439, L. 1975; amd. Sec. 3, Ch. 18, L. 1977; R.C.M. 1947, 76-107(part); amd. Sec. 3, Ch. 533, L. 1979.

76-15-320. Legal status of district. A conservation district and the supervisors thereof shall have the power to sue and be sued in the name of the district; to have a seal, which seal shall be judicially noticed; to have perpetual succession unless terminated as hereinafter provided; and to make and execute contracts and other instruments necessary or convenient to the exercise of its powers.

History: En. Sec. 8, Ch. 72, L. 1939; amd. Sec. 2, Ch. 5, L. 1959; amd. Sec. 2, Ch. 291, L. 1969; amd. Sec. 7, Ch. 431, L. 1971; amd. Sec. 2, Ch. 75, L. 1975; amd. Sec. 1, Ch. 395, L. 1977; R.C.M. 1947, 76-108(part).

76-15-321. Rulemaking authority. A conservation district and the supervisors thereof shall have the power to make and from time to time amend and repeal rules to carry into effect the purposes and powers of this chapter.

History: En. Sec. 8, Ch. 72, L. 1939; amd. Sec. 2, Ch. 5, L. 1959; amd. Sec. 2, Ch. 291, L. 1969; amd. Sec. 7, Ch. 431, L. 1971; amd. Sec. 2, Ch. 75, L. 1975; amd. Sec. 1, Ch. 395, L. 1977; R.C.M. 1947, 76-108(part); amd. Sec. 18, Ch. 266, L. 1979.

76-15-322. Filing of notice of organization of district. Within 10 days after the creation of the district, the supervisors of a conservation district shall cause a notice declaring the district organized to be filed for record in the office of the county clerk and recorder of each county in which any portion of the district is situated.

History: En. Sec. 1, Ch. 253, L. 1963; amd. Sec. 3, Ch. 291, L. 1969; amd. Sec. 14, Ch. 431, L. 1971; R.C.M. 1947, 76-201(part).

76-15-323. Copies of notice transmitted to county commissioners. Within 30 days after receipt of such notice, the county clerk and recorder shall transmit a copy of the same to the board of county commissioners, who shall determine whether the district has been lawfully organized.

History: En. Sec. 2, Ch. 253, L. 1963; amd. Sec. 1, Ch. 152, L. 1965; R.C.M. 1947, 76-202.

Part 4

Operation of Conservation Districts

76-15-401. Study of problems relating to soil and water conservation. (1) A conservation district and the supervisors thereof shall have the power to:

(a) conduct surveys, investigations, and research relating to the character of soil erosion, floodwater and sediment damages, and water quality as it pertains to saline seep and to the conservation, development, utilization, and disposal of water and the preventive and control measures and works of improvement needed;

(b) publish the results of such surveys, investigations, or research; and

(c) disseminate information concerning such preventive and control measures and works of improvement.

(2) In order to avoid duplication of research activities, no district shall initiate any research program except in cooperation with the government of this state or any of its agencies or with the United States or any of its agencies.

History: En. Sec. 8, Ch. 72, L. 1939; amd. Sec. 2, Ch. 5, L. 1959; amd. Sec. 2, Ch. 291, L. 1969; amd. Sec. 7, Ch. 431, L. 1971; amd. Sec. 2, Ch. 75, L. 1975; amd. Sec. 1, Ch. 395, L. 1977; R.C.M. 1947, 76-108(A)(1).

76-15-402. Development of soil and water conservation plans. A conservation district and the supervisors thereof shall have the power to:

(1) develop comprehensive plans for the conservation of soil resources and for the control and prevention of soil erosion and for flood prevention and conservation, development, utilization, and disposal of water within the district, which plans shall specify in such detail as may be possible the acts, procedures, performances, and avoidances which are necessary or desirable for the effectuation of such plans, including the specification of engineering operations, range management, methods of cultivation, the growing of vegetation, cropping, range programs, tillage and grazing practices, and changes in use of land; and

(2) publish such plans and information and bring them to the attention of occupiers of lands within the district.

History: En. Sec. 8, Ch. 72, L. 1939; amd. Sec. 2, Ch. 5, L. 1959; amd. Sec. 2, Ch. 291, L. 1969; amd. Sec. 7, Ch. 431, L. 1971; amd. Sec. 2, Ch. 75, L. 1975; amd. Sec. 1, Ch. 395, L. 1977; R.C.M. 1947, 76-108(A)(8).

76-15-403. Operation of projects and works. A conservation district and the supervisors thereof shall have the power to:

(1) conduct soil, vegetation, and water resources conservation projects on lands within the districts upon obtaining the consent of the owner of such lands or the necessary rights or interest in such land;

(2) carry out preventive and control measures and works of improvement for flood prevention and the conservation, development, utilization, and disposal of water within the district, including but not limited to engineering

operations, range management, methods of cultivation, the growing of vegetation, changes in use of land, and the measures listed in 76-15-101(3) on lands owned or controlled by this state or any of its agencies with the cooperation of the agency administering and having jurisdiction thereof and on any other lands within the district upon obtaining the consent of the occupier of such lands or the necessary rights or interests in such lands;

(3) cooperate or enter into agreements with and, within the limits of appropriations duly made available to it by law, furnish financial or other aid to any agency, governmental or otherwise, or any occupier of lands within the district in the carrying on of erosion control and prevention operations, works of improvement for flood prevention, and the conservation, development, utilization, and disposal of water within the district, subject to such conditions as the supervisors may deem necessary to advance the purposes of this chapter;

(4) construct, improve, operate, and maintain such structures as may be necessary or convenient for the performance of any of the operations authorized in this chapter;

(5) take over, by purchase, lease, or otherwise, and administer any soil conservation, flood prevention, drainage, irrigation, water management, erosion control, or erosion prevention project, or combinations thereof, located within its boundaries undertaken by the United States or any of its agencies or by this state or any of its agencies; manage, as agent of the United States or any of its agencies or of this state or any of its agencies, any soil conservation, flood prevention, drainage, irrigation, water management, erosion control, or erosion prevention project, or combination thereof, within its boundaries; act as agent for the United States or any of its agencies or for this state or any of its agencies in connection with the acquisition, construction, operation, or administration of any soil conservation, flood prevention, drainage, irrigation, water management, erosion control, or erosion prevention projects, or combination thereof, within its boundaries; accept donations, gifts, and contributions in money, services, materials, or otherwise from the United States or any of its agencies or from this state or any of its agencies and use or expend such moneys, services, materials, or other contributions in carrying on its operations.

History: En. Sec. 8, Ch. 72, L. 1939; amd. Sec. 2, Ch. 5, L. 1959; amd. Sec. 2, Ch. 291, L. 1969; amd. Sec. 7, Ch. 431, L. 1971; amd. Sec. 2, Ch. 75, L. 1975; amd. Sec. 1, Ch. 395, L. 1977; R.C.M. 1947, 76-108(A)(2) thru (4), (7), (9).

76-15-404. Acquisition and management of property. (1) A conservation district and the supervisors thereof shall have the power to obtain options upon and to acquire by purchase, exchange, lease, gift, grant, bequest, devise, or otherwise any property (real or personal) or rights or interests therein; to maintain, administer, and improve any properties acquired; to receive income from such properties; to expend such income in carrying out the purposes and provisions of this chapter; and to sell, lease, or otherwise dispose of any of its property or interests therein in furtherance of the purposes and provisions of this chapter.

(2) All such property shall be exempt from taxation by the state or any political subdivision thereof.

History: En. Sec. 8, Ch. 72, L. 1939; amd. Sec. 2, Ch. 5, L. 1959; amd. Sec. 2, Ch. 291, L. 1969; amd. Sec. 7, Ch. 431, L. 1971; amd. Sec. 2, Ch. 75, L. 1975; amd. Sec. 1, Ch. 395, L. 1977; R.C.M. 1947, 76-108(A)(5).

76-15-405. Limitation on acquisition, operation, or disposition of property. No provisions with respect to the acquisition, operation, or disposition of property by other public bodies shall be applicable to a district organized hereunder unless the legislature shall specifically so state.

History: En. Sec. 8, Ch. 72, L. 1939; amd. Sec. 2, Ch. 5, L. 1959; amd. Sec. 2, Ch. 291, L. 1969; amd. Sec. 7, Ch. 431, L. 1971; amd. Sec. 2, Ch. 75, L. 1975; amd. Sec. 1, Ch. 395, L. 1977; R.C.M. 1947, 76-108(B).

76-15-406. Furnishing of supplies and equipment. A conservation district and the supervisors thereof shall have the power to make available to land occupiers within the district, on such terms as it shall prescribe, agricultural and engineering machinery and equipment, fertilizer, seeds and seedlings, and such other material or equipment as will assist such land occupiers to carry on operations upon their lands for the conservation of soil resources and for the prevention and control of soil erosion, and for flood prevention and the conservation, development, utilization, and disposal of water.

History: En. Sec. 8, Ch. 72, L. 1939; amd. Sec. 2, Ch. 5, L. 1959; amd. Sec. 2, Ch. 291, L. 1969; amd. Sec. 7, Ch. 431, L. 1971; amd. Sec. 2, Ch. 75, L. 1975; amd. Sec. 1, Ch. 395, L. 1977; R.C.M. 1947, 76-108(A)(6).

76-15-407. Selection and acquisition of water storage sites. (1) Each conservation district within the state shall seek and may select at least one off-stream water storage site for the construction of a reservoir.

(2) If funding is available for a reservoir or other reclamation project, the conservation district shall acquire the site by purchase.

(3) Supervisors of conservation districts may designate sites for future construction of reservoirs. The supervisors shall designate such site by filing a legal description thereof in the office of the clerk and recorder of the county in which the site is located or the counties in which the site is located if it extends across the boundaries of two or more counties. Upon filing of such designation, the state of Montana, its agencies, or political subdivisions may not acquire the properties so designated for public purposes other than reservoir sites and may not construct any public facilities except reservoirs. Supervisors may cancel a site designation by filing notice with the clerk and recorder of the county or counties affected.

History: En. 76-118 by Sec. 1, Ch. 418, L. 1977; R.C.M. 1947, 76-118.

76-15-408. Funding of storage reservoirs. Each district shall seek funding for the construction of off-stream storage reservoirs, especially funding from the renewable resource fund. The department of natural resources and conservation shall provide assistance, both administrative and technical, in the preparation of grant and funding applications by the districts.

History: En. 76-119 by Sec. 2, Ch. 418, L. 1977; R.C.M. 1947, 76-119.

76-15-409. Purposes of off-stream storage. The reservoirs shall provide water storage for appropriators within the conservation district and shall provide water for additional beneficial uses. The reservoir may be part of a federal reclamation project and may be used to provide flood control in the district.

History: En. 76-120 by Sec. 3, Ch. 418, L. 1977; R.C.M. 1947, 76-120.

76-15-410. Disposition of excess water. (1) The conservation district may dispose of water in excess of that needed to meet the requirements of prior appropriators by selling the excess water to any person who will apply the water to an agreed beneficial use within the state.

(2) In making sales under this section, the district shall allocate water on the basis of priorities established by each local district in accordance with 76-15-701 through 76-15-707 according to need and beneficial use.

History: En. 76-121 by Sec. 4, Ch. 418, L. 1977; R.C.M. 1947, 76-121.

76-15-411. Conditions to extend benefits to nonstate lands. As a condition to the extending of any benefits under this chapter to or the performance of work upon any lands not owned or controlled by this state or any of its agencies, the supervisors may require contributions in money, services, materials, or otherwise to any operations conferring such benefits and may require land occupiers to enter into and perform such agreements or covenants as to the permanent use of such lands as will tend to prevent or control erosion and prevent floodwater and sediment damages thereon.

History: En. Sec. 8, Ch. 72, L. 1939; amd. Sec. 2, Ch. 5, L. 1959; amd. Sec. 2, Ch. 291, L. 1969; amd. Sec. 7, Ch. 431, L. 1971; amd. Sec. 2, Ch. 75, L. 1975; amd. Sec. 1, Ch. 395, L. 1977; R.C.M. 1947, 76-108(A)(11).

Part 5

Financial Aspects of Conservation Districts

76-15-501. Financial management. A conservation district and the supervisors thereof shall have the power to:

(1) borrow money and incur indebtedness and issue bonds or other evidence of such indebtedness;

(2) also refund or retire an indebtedness or lien that may exist against the district or property thereof;

(3) fix and revise as necessary and collect rates, fees, tolls, rents, or other charges for the use of or for services, facilities, and materials furnished or provided, and revenues from these sources may be expended in carrying out the purposes and provisions of this chapter;

(4) cause taxes to be levied in the same manner provided for in this part for the purpose of paying any obligation of the district and to accomplish the purposes of this chapter in the manner herein provided;

(5) apply for and receive federal revenue sharing funds in order to carry out the purposes and provisions of this chapter.

History: En. Sec. 8, Ch. 72, L. 1939; amd. Sec. 2, Ch. 5, L. 1959; amd. Sec. 2, Ch. 291, L. 1969; amd. Sec. 7, Ch. 431, L. 1971; amd. Sec. 2, Ch. 75, L. 1975; amd. Sec. 1, Ch. 395, L. 1977; R.C.M. 1947, 76-108(A)(12) thru (15).

76-15-502. Allocation of state funds among districts. (1) Unless otherwise provided by law, all money which may from time to time be appropriated out of the state treasury to pay the administrative and other expenses of conservation districts shall be allocated by the department among the districts already organized or to be organized during the ensuing biennial fiscal period in accordance with the procedure specified in subsections (2) and (3) of this section.

(2) (a) Seventy-five percent of all money which may be appropriated to pay the administrative and other expenses of conservation districts shall be

allocated by the department among all the districts organized or to be organized within the ensuing biennial fiscal period under this chapter in direct proportion to the total acreage of land within each district.

(b) The remaining 25% of the money shall be allocated by the department among the districts on such basis of allocation as is fair, reasonable, and in the public interest, giving due consideration to the greater relative expense of carrying on operations within the particular districts because of such factors as unusual topography, unusual severity of erosion, special difficulty of carrying on operations, special volume of work to be done, and the special importance of instituting erosion control operations immediately.

(3) In making allocations of the money, the department shall retain an amount estimated by it to be adequate to enable it to make subsequent allocations in accordance with this section and 76-15-503 and 76-15-504 from time to time among districts which may be organized after the initial allocations are made but within the ensuing biennial fiscal period.

History: En. Sec. 15, Ch. 72, L. 1939; amd. Sec. 12, Ch. 431, L. 1971; amd. Sec. 95, Ch. 253, L. 1974; R.C.M. 1947, 76-115(part).

76-15-503. Permissible uses of state money. All money allocated to a district by the department shall be available to the supervisors of the district for all administrative and other expenses of the district under this chapter and for all administrative and other expenses of the board of adjustment established or to be established by the district.

History: En. Sec. 15, Ch. 72, L. 1939; amd. Sec. 12, Ch. 431, L. 1971; amd. Sec. 95, Ch. 253, L. 1974; R.C.M. 1947, 76-115(part).

76-15-504. Submission of budget to department of administration. (1) The department shall submit to the department of administration a request for an appropriation as provided in the budget act on or before August 1 of each year preceding a regular session of the legislature.

(2) The request for an appropriation shall state in addition to the requirements of the budget act the following:

(a) the number and acreages of districts in existence or in process of organization, together with an estimate of the number and probable acreages of the districts which may be organized during the ensuing biennial fiscal period;

(b) a statement of the balance of funds, if any, available to the department and to the districts; and

(c) the estimates of the department as to the sums needed for its administrative and other expenses and for allocation among the several districts during the ensuing biennial fiscal period.

History: En. Sec. 15, Ch. 72, L. 1939; amd. Sec. 12, Ch. 431, L. 1971; amd. Sec. 95, Ch. 253, L. 1974; R.C.M. 1947, 76-115(3).

76-15-505. Authorization to borrow money — limitations. (1) If, after the levy of the annual assessments for the current year, the board finds that, because of some unusual or unforeseen cause, funds raised through the collection of the assessments and from other sources will not be sufficient for the proper maintenance and operation of the district and the works therein, the board may:

(a) borrow additional funds needed to an amount not to exceed 50 cents per acre for the lands within the district and may pledge the credit of the district for the payment of the same; or

(b) request the county commissioners to issue and register warrants in anticipation of further collections.

(2) The board shall include in the levy for the ensuing year the amount required to pay the loan or to retire the warrants. The warrants shall not exceed 90% of the assessment for the year.

History: En. Sec. 12, Ch. 291, L. 1969; R.C.M. 1947, 76-220.

76-15-506. Bonds authorized — election. (1) Whenever a board of supervisors deems it necessary, it may issue bonds payable from revenues, assessments, or both, or the district may use other financing as provided for by this part and part 6 for the cost of works.

(2) The board of supervisors may call a special election to vote upon the proposition of issuing the bonds or may submit the proposition as a special question at a regular or general election. If from the returns of the election it appears that the majority of votes cast at such election was in favor of and assented to the incurring of the indebtedness, then the board of supervisors may by resolution provide for the issuance of such bonds.

(3) The authorization of such undertaking, the form, and content shall be carried out in accordance with 7-7-4426, 7-7-4427, and 7-7-4432 through 7-7-4435. Validity of such bonds, use of revenue, and refunding shall be in accordance with the provisions of 7-7-4425, 7-7-4430, 7-7-4501 (2) and (3), and 7-7-4502 through 7-7-4505.

(4) Any bonds issued under this part and part 6 have the same force, value, and use as bonds issued by a municipality and are exempt from taxation as property within the state of Montana.

History: En. Sec. 15, Ch. 291, L. 1969; amd. Sec. 19, Ch. 431, L. 1971; R.C.M. 1947, 76-223; amd. Sec. 394, Ch. 571, L. 1979.

Compiler's Comments

Transition. Sec. 404, Ch. 571, L. 1979, is a transition section, the text of which may be found in the compiler's comment to 13-1-104.

76-15-507. Investment of funds. The board of supervisors shall have the power and authority to direct the investment of funds in a sinking fund in interest-bearing securities whenever in their judgment the same may be to the best interests of the district. But all such securities shall be converted into cash in time to meet the principal on the bonds payable from such sinking fund promptly at their maturity.

History: En. Sec. 13, Ch. 291, L. 1969; R.C.M. 1947, 76-221.

76-15-508. Management of surplus funds. The board of supervisors of a conservation district may invest any surplus funds of the district, except county tax funds, not needed for immediate use in the operations of the district or its activities, to pay bonds or coupons, or to meet current expenses in interest-bearing bonds or securities of the United States or of any agency of the United States if the bonds are guaranteed by the United States or in bonds of the state of Montana or any county or municipal corporation in said state. The board of supervisors of said district may require any funds of the district to be deposited with such depository or bank as may be designated by the board and likewise shall have authority to require the treasurer of the district to take from such depository a bond with corporate surety to ensure payment of any such deposit or to require such depository to pledge securities of the same kind as the district is authorized to invest its funds in to ensure payment of any such deposit.

History: En. Sec. 14, Ch. 291, L. 1969; amd. Sec. 18, Ch. 431, L. 1971; R.C.M. 1947, 76-222.

76-15-509 and 76-15-510 reserved.

76-15-511. Estimate of money to be raised by assessment. The supervisors of the district shall on or before the first Monday of July of each year furnish the board of county commissioners an estimate in writing of the amount of money to be raised by assessment which is needed for the next ensuing fiscal year.

History: En. Sec. 4, Ch. 253, L. 1963; amd. Sec. 2, Ch. 152, L. 1965; R.C.M. 1947, 76-204.

76-15-512. Expenses to be covered by estimate. The total amount of the estimate shall be sufficient to raise the amount of money necessary during the ensuing year to pay the incidental expenses of the district.

History: En. Sec. 6, Ch. 253, L. 1963; amd. Sec. 5, Ch. 291, L. 1969; R.C.M. 1947, 76-206.

76-15-513. Division between counties of money to be raised by regular and special assessment. (1) If the district lies in more than one county, the supervisors of the district shall divide the amount of the estimate of the regular assessment in the proportion to the value of the land in the district lying in each county. The value shall be determined from the last assessment rolls of the counties. The supervisors shall furnish the boards of county commissioners of each of the respective counties a statement of the part of the estimate apportioned to the county.

(2) The estimates of the special assessments shall be divided in proportion to the value of land lying within the project area.

History: En. Sec. 5, Ch. 253, L. 1963; amd. Sec. 4, Ch. 291, L. 1969; R.C.M. 1947, 76-205.

76-15-514. Regular and special assessments. Assessments levied pursuant to this part and part 6 shall be known as regular and special assessments.

History: En. Sec. 7, Ch. 253, L. 1963; amd. Sec. 6, Ch. 291, L. 1969; R.C.M. 1947, 76-207.

76-15-515. Maximum regular assessment. The regular assessment in any one year shall not exceed 1 ½ mills on the dollar of total taxable valuation of real property within the district, except that cities that voted to be included in a district prior to July 1, 1971, shall be excluded from the district by a majority vote of the council. The valuation shall be determined according to the last assessment roll.

History: En. Sec. 8, Ch. 253, L. 1963; amd. Sec. 3, Ch. 152, L. 1965; amd. Sec. 7, Ch. 291, L. 1969; amd. Sec. 15, Ch. 431, L. 1971; R.C.M. 1947, 76-208.

76-15-516. Levy of regular and special assessment. (1) The board of county commissioners of each county in which there lies any portion of the district may, annually at the time of levying county taxes, levy an assessment on the taxable real property within the district, except that cities that voted to be included in a district prior to July 1, 1971, shall be excluded from the district by a majority vote of the council. It shall be known as the ".... (name of district) conservation district regular assessment" and shall be sufficient to raise the amount reported to them in the estimate of the supervisors.

(2) The board of county commissioners of each county in which there lies any portion of a project area may, annually at the time of levying county taxes, levy an assessment not to exceed 3 mills on the taxable real property within the project area. It shall be known as ".... (name of the project area) special assessment" and shall be sufficient to raise the amount reported to them in the estimate of the supervisors.

History: **En. Sec. 9, Ch. 253, L. 1963; amd. Sec. 4, Ch. 152, L. 1965; amd. Sec. 8, Ch. 291, L. 1969; amd. Sec. 16, Ch. 431, L. 1971; R.C.M. 1947, 76-209.**

76-15-517. Computation of rate of assessment. The board of county commissioners shall determine the rate of assessment by deducting 15% for anticipated delinquencies from the total assessed value of the taxable real property in the district, except that cities that voted to be included in a district prior to July 1, 1971, shall be excluded from the district by a majority vote of the council, and then dividing the sum required to be raised by the remainder of the total assessed value. If a fraction of a cent occurs in a valuation of $100, it shall be taken as a full cent.

History: **En. Sec. 10, Ch. 253, L. 1963; amd. Sec. 5, Ch. 152, L. 1965; amd. Sec. 9, Ch. 291, L. 1969; amd. Sec. 17, Ch. 431, L. 1971; R.C.M. 1947, 76-210.**

76-15-518. Certification of assessment to assessor — entry on assessment roll. The board of county commissioners of each county in which any portion of the district is situated may levy the assessment provided in this part or part 6. The assessment shall be certified to the county assessor of each of the respective counties and entered on the assessment roll.

History: **En. Sec. 11, Ch. 253, L. 1963; R.C.M. 1947, 76-211.**

76-15-519. Application of general law on levy and collection. The provisions of law relating to the levy and collection of county taxes and the duties of county officers with respect thereto, insofar as they are applicable and not in conflict with this part and part 6, are hereby adopted and made a part hereof.

History: **En. Sec. 12, Ch. 253, L. 1963; R.C.M. 1947, 76-212(part).**

76-15-520. Liability of county officers. The county officers referred to in 76-15-519 are liable on their several official bonds for the faithful discharge of their duties under this part and part 6.

History: **En. Sec. 12, Ch. 253, L. 1963; R.C.M. 1947, 76-212(part).**

76-15-521. Principal county defined. "Principal county" as used in this part means the county in which all or the greatest portion of the land of a district is situated. The principal county remains the same regardless of any change in boundaries.

History: **En. Sec. 13, Ch. 253, L. 1963; R.C.M. 1947, 76-213.**

76-15-522. Settlements by county treasurers other than of principal county. The treasurers of each of the counties other than the principal county shall, not less than twice a year or upon order of the supervisors of the district, settle with such supervisors and pay to the treasurer of the principal county all money belonging to the district and in their possession.

History: En. Sec. 14, Ch. 253, L. 1963; R.C.M. 1947, 76-214.

76-15-523. Depository of district funds. The treasury of the principal county is the depository of all of the county tax funds of the district.

History: En. Sec. 15, Ch. 253, L. 1963; amd. Sec. 10, Ch. 291, L. 1969; R.C.M. 1947, 76-215.

76-15-524. Receipt and crediting of district funds — responsibility on bond. The treasurer of the principal county shall receive and receipt for all county tax money of the district and place the same to the credit of the district. He is responsible on his official bond for the safekeeping and disbursement, in the manner provided in this part and part 6, of the money of the district held by him.

History: En. Sec. 16, Ch. 253, L. 1963; amd. Sec. 11, Ch. 291, L. 1969; R.C.M. 1947, 76-216.

76-15-525. Payment of district money — warrants. The treasurer of the principal county shall pay out money of the district only upon warrants of the county auditor or, in those counties not having an auditor, the county clerk and recorder, drawn upon order of the supervisors of the district and signed by at least two of such supervisors.

History: En. Sec. 17, Ch. 253, L. 1963; R.C.M. 1947, 76-217.

76-15-526. Treasurer's reports. The treasurer shall report in writing at each regular meeting of the supervisors and as often at other times as the supervisors may request the amount of money on hand and the receipts and disbursements since his last report. Such report shall be verified.

History: En. Sec. 18, Ch. 253, L. 1963; R.C.M. 1947, 76-218.

76-15-527. Purpose of expenditures. All money collected under 76-15-511 through 76-15-526 shall be expended for the purposes provided in 76-15-502 and 76-15-503.

History: En. Sec. 19, Ch. 253, L. 1963; R.C.M. 1947, 76-219.

76-15-528. Lien for special assessments. Any special assessment made and levied to defray the cost and expenses of any of the work enumerated in this chapter, together with any percentages imposed for delinquency and for cost of collection, shall constitute a lien against the property upon which such assessment is levied from the date on which such assessment is levied. This lien can only be extinguished by payment of such assessment with all penalties, costs, and interest.

History: En. Sec. 23, Ch. 291, L. 1969; R.C.M. 1947, 76-231; amd. Sec. 19, Ch. 266, L. 1979.

76-15-529. Assessments unaffected by misnomers and mistakes relating to ownership. When under the provisions of this part and part 6 special taxes and assessments are assessed against any lot or parcel of land as the property of a particular person, no misnomer of the owner or supposed owner or other mistake relating to the ownership thereof shall affect such assessment or render it void or voidable.

History: En. Sec. 24, Ch. 291, L. 1969; R.C.M. 1947, 76-232.

76-15-530. Conservation district account — administration. (1) There is a conservation district account in the earmarked revenue fund of the state treasury. Money is paid into this account under 15-35-108. The state treasurer shall draw warrants payable from this account on order from the department of natural resources and conservation.

(2) The department of natural resources and conservation shall administer the conservation district account. The money shall be distributed from the account to the conservation districts on the basis of need. A conservation district may submit an application to the department of natural resources and conservation for a grant of funds for purposes that conservation districts are authorized to perform.

(3) A conservation district is not eligible to receive a grant unless it has exhausted its authorized mill levies.

(4) The department of natural resources and conservation may adopt rules implementing this section that provide for the form and content of applications and the criteria, terms, and conditions for making grants.

History: En. Sec. 2, Ch. 479, L. 1981.

Compiler's Comments

1981 Title: The title to HB 223 (Ch. 479, L. 1981), read: "An act to reallocate the coal severance tax by reducing the amount allocated to alternative energy research from 5 percent to 4 ½ percent and allocating ½ of 1 percent of the tax to conservation district operations; amending section 15-35-108, MCA."

Preamble: The preamble to HB 223 (Ch. 479, L. 1981) provided: "WHEREAS, Montana's Conservation Districts are legal subdivisions of state government responsible under law to develop and carry out long-range programs that will result in the conservation and improvement of the soil and water resources, to provide assistance in the planning and application of conservation measures, and to encourage maximum participation of the general public and all local public and private agencies to fulfill this purpose; and

WHEREAS, Montana's Conservation Districts represent about 14,500 cooperators totaling 43,550,000 acres of farmland and ranchland within their boundaries; and

WHEREAS, districts in urban and developing areas provide soil surveys, water inventories, assistance with waste disposal, and other services to builders, contractors, planning commissions, municipal officials, schools, hospitals, industries, and smaller landowners; and

WHEREAS, two concepts gaining support and understanding are the desirability of decentralized government and the limits of natural resources. In combination, these ideas and the demands on their services have resulted in tremendously magnified responsibilities for conservation districts."

Statement of Intent: The statement of intent attached to HB 223 (Ch. 479, L. 1981) provided: "Because HB 223 directs the Department of Natural Resources and Conservation to adopt rules establishing the form and content of applications and the criteria, terms, and conditions for making grants to conservation districts from the funds appropriated to the conservation districts earmarked revenue account from the allocation of 1% of the coal severance tax, the House Committee on Taxation issues this statement of intent for the purpose of clarifying that authority.

Section 2 of HB 223 provides rulemaking authority in the Department of Natural Resources and Conservation. It is contemplated the rules should address the following:

(a) the form of an application for a grant to a conservation district;

(b) the content that must be included in an application, including but not limited to:

(1) the name of the district;

(2) a statement that the maximum statutory mill levage [sic] has been levied;

(3) the sources of funding the conservation district is receiving that the grant is intended to supplement;

(4) the special project or purpose, including administrative purposes, which must be a recognized purpose for which conservation districts are authorized by law;

(5) a statement of the need for the grant; and

(6) an authorized signature

(c) the criteria under which the department may grant funds, including but not limited to:

(1) the basis of the need for a grant;

(2) the availability of other funding sources;

(3) the type of project or purpose; and

(4) the maximum amount of funding

(d) such terms and conditions that would insure that the grant funds are used for the purposes specified by statute;

(e) such rules as may be necessary to monitor and account for the disbursement and expending of any grant funds."

Part 6

Project Areas

76-15-601. Establishment of project areas — special assessments. Whenever the public interest or convenience may require and upon the petition of a county, city, town, cooperative grazing association, or other special purpose district or by more than 50% of the qualified electors affected thereby, the board of supervisors is hereby authorized and empowered to establish project areas for carrying out projects to accomplish one or more of the purposes of the district and within which area special assessments can be made for carrying out project purposes.

History: En. Sec. 16, Ch. 291, L. 1969; amd. Sec. 20, Ch. 431, L. 1971; R.C.M. 1947, 76-224.

76-15-602. Hearing on petition to establish project area. Upon receipt of a petition to establish a project area, the board or boards of supervisors shall cause due notice to be given of a public hearing on the petition.

History: En. Sec. 17, Ch. 291, L. 1969; amd. Sec. 21, Ch. 431, L. 1971; R.C.M. 1947, 76-225(part).

76-15-603. Investigation of need for project area. Prior to the hearing, the board or boards of supervisors shall make or cause to be made an investigation of the need for establishment of the proposed project area and shall prepare a report of their findings.

History: En. Sec. 17, Ch. 291, L. 1969; amd. Sec. 21, Ch. 431, L. 1971; R.C.M. 1947, 76-225(part).

76-15-604. Protest procedure. At any time within 15 days after the date of the last publication of the notice of the hearing on the petition, any owner of property liable to be assessed for the project may protest against the proposed project or the creation of the project area, or both. The protest must be in writing and be delivered to the secretary of the conservation district who shall endorse thereon the date of its receipt by him.

History: En. Sec. 18, Ch. 291, L. 1969; amd. Sec. 22, Ch. 431, L. 1971; R.C.M. 1947, 76-226(part).

76-15-605. Board decision. (1) The report of 76-15-603 shall be presented and read at the hearing on the petition.

(2) At the public hearing on the petition, the board of supervisors shall proceed to hear and pass upon all protests made and its decision shall be final and conclusive except when owners of more than 50% of the land in the proposed project area protest the project. If owners of more than 50% of the land protest the project, no further action may be taken for a period of 6 months from the date of the hearing, after which a new petition may be filed.

(3) If the board or boards of supervisors find that it is not feasible, desirable, or practical to establish the proposed project area, they shall make an order denying the petition and shall state therein their reasons for so doing.

(4) If, however, the board finds that the project is desirable, proper, and necessary, it shall grant the petition, establish the boundaries of the proposed

project area, and notify the county election administrator that an election is to be held in the proposed area for the purpose of determining whether or not the project area shall be created.

History: En. Secs. 17, 18, Ch. 291, L. 1969; amd. Secs. 21, 22, Ch. 431, L. 1971; R.C.M. 1947, 76-225(part), 76-226(part); amd. Sec. 395, Ch. 571, L. 1979.

Compiler's Comments

Transition. Sec. 404, Ch. 571, L. 1979, is a transition section, the text of which may be found in the compiler's comment to 13-1-104.

76-15-606. Election procedure. (1) The question shall be submitted to the electors by ballot on which the words "For creation of proposed project area" and "Against creation of proposed project area" shall appear, with a square before each proposition and directions to insert an "X" mark in the square before one or the other of said propositions as the voter may favor or oppose creation of the project area.

(2) No person shall be entitled to vote at the election unless such person possesses all the qualifications required of electors under Title 13 and resides within the boundaries of the proposed project area and the county in which he proposes to vote.

History: En. Sec. 17, Ch. 291, L. 1969; amd. Sec. 21, Ch. 431, L. 1971; R.C.M. 1947, 76-225(part).

76-15-607. Notice of creation of project area. If the majority of the votes cast at the election are in favor of creating a project area, the board or boards of supervisors shall create the project area and shall file with the county clerk and recorder in each county in which there lies a portion of the project area a notice of creation of the project area setting forth the purposes of the area and the boundaries thereof.

History: En. Sec. 17, Ch. 291, L. 1969; amd. Sec. 21, Ch. 431, L. 1971; R.C.M. 1947, 76-225(part).

76-15-608. Description of work or project area. In all resolutions, notices, orders, and determinations, it shall be sufficient to briefly describe the work or the project area or both.

History: En. Sec. 19, Ch. 291, L. 1969; R.C.M. 1947, 76-227.

76-15-609. Area included in project area. A project area may include a part or all of any district or may include areas in more than one district.

History: En. Sec. 20, Ch. 291, L. 1969; R.C.M. 1947, 76-228(part).

76-15-610. Administration of project area. The affairs of a project area shall be administered by the board or boards of supervisors or their authorized agents.

History: En. Sec. 20, Ch. 291, L. 1969; R.C.M. 1947, 76-228(part).

76-15-611. Federal authority unaffected. (1) The provisions of this part do not apply to the government of the United States or any department, bureau, or agency thereof, except to such extent as the government of the United States or any department, bureau, or agency thereof may desire to take advantage of its provisions. It is an express purpose and intent of this part to aid but not to interfere with the government of the United States or any department, bureau, or agency thereof in any undertaking over which such federal authority desires to exercise full supervision and control.

(2) The provisions of this part may not be construed to impair, limit, or repeal any right whatsoever which the government of the United States or any department, bureau, or agency thereof has to full and complete jurisdiction, management, or control over projects over which such federal authority desires to exercise such rights. It is a purpose of this part expressly to subordinate any power of jurisdiction and to never interfere directly with such federal authority.

History: **En. Sec. 22, Ch. 291, L. 1969; R.C.M. 1947, 76-230; amd. Sec. 20, Ch. 266, L. 1979.**

76-15-612. Duty to maintain improvements. Whenever any project petitioned for or created by the state or federal government has been made, built, constructed, erected, or accomplished as provided in this part, it is hereby made the duty of the board or boards of supervisors under whose jurisdiction the project area was created to adequately and suitably maintain and preserve said improvements and fully to keep the same in proper repair and operation by contract or otherwise in the way or manner as the board shall deem suitable and proper.

History: **En. Sec. 25, Ch. 291, L. 1969; R.C.M. 1947, 76-233.**

76-15-613 through 76-15-620 reserved.

76-15-621. Estimate of expenses of project area. (1) When a project area has been created, the board or boards of supervisors shall estimate the expenses of the project area from the date of its establishment until the end of the ensuing fiscal year and before July 1 in each year thereafter shall estimate project area expenses for the fiscal year ensuing.

(2) Estimates of project area expenses may include revenue needed to pay the interest or principal of any bonded debt, costs of rights-of-way, easements, or other interest in property deemed necessary for the construction, operation, and maintenance of any projects therein.

History: **En. Sec. 21, Ch. 291, L. 1969; R.C.M. 1947, 76-229(part).**

76-15-622. Financing of project area expenses. (1) The expense of the project area may, in the discretion of the board or boards of supervisors, be financed in whole from revenue received by regular assessments or by revenue received in part from regular assessments and in part from special assessments.

(2) Upon adoption of a budget covering necessary expenses, the board or boards of supervisors shall send a copy of such budget or apportionment thereof to the board of county commissioners of each county in the project area and the city auditor of each city in the project area.

History: **En. Sec. 21, Ch. 291, L. 1969; R.C.M. 1947, 76-229(part).**

76-15-623. Administration of special assessment. (1) When the board or boards of supervisors have determined that a special assessment is necessary, the board of county commissioners of such county in which there lies any portion of a project area shall annually at the time of levying county taxes levy a special assessment of the taxable real property in the project area, not to exceed 3 mills. It shall be known as the "....(name of district) soil and water conservation district special assessment" and shall be sufficient to raise the income reported to it in the estimate of the supervisors.

(2) Each lot or parcel of land to be assessed shall be assessed with that part of the amount of money required which its taxable valuation bears to the total taxable valuation of all the lands to be assessed.

History: En. Sec. 21, Ch. 291, L. 1969; R.C.M. 1947, 76-229(part).

76-15-624. Disposition of funds — insufficient revenue. (1) Funds produced each year by this special tax levy shall be available until spent.

(2) If this special tax levy in any year does not produce sufficient revenue to pay the project area expenses, a fund sufficient to pay the same may be accumulated.

History: En. Sec. 21, Ch. 291, L. 1969; R.C.M. 1947, 76-229(part).

76-15-625. Limitation on special assessment. A special assessment to defray the expenses of a project area may be spread over a term of not to exceed 40 years.

History: En. Sec. 21, Ch. 291, L. 1969; R.C.M. 1947, 76-229(part).

Part 7

Land Use Regulations

76-15-701. Adoption of land use regulations. (1) The supervisors of any district shall have authority to formulate regulations governing the use of lands within the district in the interest of conserving soil and water resources and preventing and controlling erosion. The supervisors may conduct such public meetings and public hearings upon tentative regulations as may be necessary to assist them in this work.

(2) The supervisors shall not have authority to enact such land use regulations into law until after they shall have caused due notice to be given of their intention to order a referendum for submission of such regulations to the qualified electors within the boundaries of the district for their indication of approval or disapproval of such proposed regulations and until after the supervisors have considered the result of such referendum.

History: En. Sec. 9, Ch. 72, L. 1939; amd. Sec. 8, Ch. 431, L. 1971; R.C.M. 1947, 76-109(A); amd. Sec. 396, Ch. 571, L. 1979.

Compiler's Comments

Transition. Sec. 404, Ch. 571, L. 1979, is a transition section, the text of which may be found in the compiler's comment to 13-1-104.

76-15-702. Referendum on proposed land use regulations. (1) The proposed regulations shall be embodied in a proposed ordinance. Copies of such proposed ordinance shall be available for the inspection of all eligible voters during the period between publication of such notice and the date of the referendum.

(2) The notices of the referendum shall recite the contents of such proposed ordinance or shall state where copies of such proposed ordinance may be examined. The question shall be submitted by ballots upon which the

words "For approval of proposed ordinance No ...., prescribing land use regulations for conservation of soil and prevention of erosion" and "Against approval of proposed ordinance No ...., prescribing land use regulations for conservation of soil and prevention of erosion" shall appear, with a square before each proposition and a direction to insert an "X" mark in the square before one or the other of said propositions as the voter may favor or oppose approval of such proposed ordinance.

(3) The supervisors shall publish the result of the referendum. All registered electors within the district shall be eligible to vote in such referendum. No informalities in the conduct of such referendum or in any matters relating thereto shall invalidate said referendum or the result thereof if notice thereof shall have been given substantially as herein provided and said referendum shall have been fairly conducted.

History: En. Sec. 9, Ch. 72, L. 1939; amd. Sec. 8, Ch. 431, L. 1971; R.C.M. 1947, 76-109(B); amd. Sec. 397, Ch. 571, L. 1979.

76-15-703. Voter approval of proposed regulations required. The supervisors shall not have authority to enact such proposed ordinance into law unless a majority of the votes cast in such referendum shall have been cast for approval of the proposed ordinance. The approval of the proposed ordinance by a majority of the votes cast in such referendum shall not be deemed to require the supervisors to enact such proposed ordinance into law.

History: En. Sec. 9, Ch. 72, L. 1939; amd. Sec. 8, Ch. 431, L. 1971; R.C.M. 1947, 76-109(part).

76-15-704. Regulations to have force of law. Land use regulations prescribed in ordinances adopted pursuant to the provisions of 76-15-701 through 76-15-707 by the supervisors of any district shall have the force and effect of law in the district and shall be binding and obligatory upon all occupiers of lands within such district.

History: En. Sec. 9, Ch. 72, L. 1939; amd. Sec. 8, Ch. 431, L. 1971; R.C.M. 1947, 76-109(part).

76-15-705. Alteration of regulations. (1) Any qualified elector within such district may at any time file a petition with the supervisors asking that any or all of the land use regulations prescribed in any ordinance adopted by the supervisors under the provisions of 76-15-701 through 76-15-707 be amended, supplemented, or repealed.

(2) Land use regulations prescribed in any ordinance adopted pursuant to the provisions of 76-15-701 through 76-15-707 shall not be amended, supplemented, or repealed except in accordance with the procedure prescribed in 76-15-701 through 76-15-707 for adoption of land use regulations.

(3) Referenda on adoption, amendment, supplementation, or repeal of land use regulations shall not be held more often than once in 6 months.

History: En. Sec. 9, Ch. 72, L. 1939; amd. Sec. 8, Ch. 431, L. 1971; R.C.M. 1947, 76-109(part).

76-15-706. Contents of land use regulations. (1) The regulations to be adopted by the supervisors under the provisions of 76-15-701 through 76-15-707 may include:

(a) provisions requiring the carrying out of necessary engineering operations, including the construction of water spreaders, terraces, terrace outlets, check dams, dikes, ponds, ditches, fences, and other necessary structures;

(b) provisions requiring observance of particular methods of cultivation or grazing, including contour cultivating, contour furrowing, lister furrowing, sowing, planting, strip cropping, seeding, and planting of lands to water conserving and erosion preventing plants, trees, and grasses, forestation and reforestation;

(c) specifications of cropping and range programs and tillage and grazing practices to be observed;

(d) provisions requiring the retirement from cultivation of highly erosive areas or of areas on which erosion may not be adequately controlled if cultivation is carried on;

(e) provisions for such other means, measures, operations, and programs as may assist conservation of soil and water resources and prevent or control erosion in the district, having due regard to the legislative findings set forth in 76-15-101 and 76-15-102.

(2) The regulations shall be uniform throughout the territory comprised within the district except that the supervisors may classify the lands within the district with reference to such factors as soil type, degree of slope, degree of erosion, threatened or existing, grazing and cropping programs, tillage and range practices in use, and other relevant factors and may provide regulations varying with the type or class of land affected but uniform as to all lands within each class or type.

History: En. Sec. 9, Ch. 72, L. 1939; amd. Sec. 8, Ch. 431, L. 1971; R.C.M. 1947, 76-109(part).

76-15-707. Publication of regulations. Copies of land use regulations adopted under the provisions of 76-15-701 through 76-15-707 shall be printed and made available to all occupiers of land within the district.

History: En. Sec. 9, Ch. 72, L. 1939; amd. Sec. 8, Ch. 431, L. 1971; R.C.M. 1947, 76-109(part).

76-15-708. Power to determine compliance with regulations. After a complaint shall have been filed with the supervisors charging a violation of the regulations, the supervisors shall have authority to go upon any lands within the district to determine whether land use regulations adopted under the provisions of 76-15-701 through 76-15-707 are being observed.

History: En. Sec. 10, Ch. 72, L. 1939; amd. Sec. 9, Ch. 431, L. 1971; R.C.M. 1947, 76-110(1).

76-15-709. Enforcement of regulations — petition to district court. Where the supervisors of any district shall find that any of the provisions of land use regulations prescribed in any ordinance adopted in accordance with the provisions of 76-15-701 through 76-15-707 are not being observed on particular lands and that such nonobservance tends to increase erosion on such lands and is interfering with the prevention or control of erosion on other lands within the district, the supervisors may present a petition, duly verified, to the district court of the county in which the lands of the defendant may lie:

(1) setting forth:

(a) the adoption of the ordinance prescribing land use regulations;

(b) the failure of the defendant to observe such regulations and to perform particular work, operations, or avoidances as required thereby; and

(c) that such nonobservance tends to increase erosion on such lands and is interfering with the prevention or control of erosion on other lands within the district; and

(2) praying the court:

(a) to require the defendant to perform the work, operations, or avoidances within a reasonable time; and

(b) to order that, if the defendant shall fail so to perform, the supervisors may go on the land, perform the work or other operations, or otherwise bring the condition of such lands into conformity with the requirements of such regulations and recover the costs and expenses thereof, with interest, from the defendant.

History: **En. Sec. 10, Ch. 72, L. 1939; amd. Sec. 9, Ch. 431, L. 1971; R.C.M. 1947, 76-110(2).**

76-15-710. Court procedure after petition is filed. (1) Upon the presentation of such petition, the court shall cause process to be issued against the defendant and shall hear the case. If it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made.

(2) In all cases where the person in possession of lands who shall fail to perform such work, operations, or avoidances shall not be the owner, the owner of such lands shall be joined as party defendant.

(3) The court may dismiss the petition, or it may require the defendant to perform the work, operations, or avoidances and may provide that, upon the failure of the defendant to initiate such performance within the time specified in the order of the court and to prosecute the same to completion with reasonable diligence, the supervisors may enter upon the lands involved and perform the work or operations or otherwise bring the condition of such land into conformity with the requirements of the regulations and recover the costs and expenses thereof, with interest at the rate of 5% a year, from the defendant.

(4) The court shall retain jurisdiction of the case until after the work has been completed. Upon completion of such work pursuant to such order of the court, the supervisors may file a petition with the court, a copy of which shall be served upon the defendant in the case, stating the costs and expenses sustained by them in the performance of the work and praying judgment therefor with interest. The court shall have jurisdiction to enter judgment for the amount of such costs and expenses, with interest at the rate of 5% a year until paid, together with the costs of suit, including a reasonable attorney's fee to be fixed by the court.

History: **En. Sec. 10, Ch. 72, L. 1939; amd. Sec. 9, Ch. 431, L. 1971; R.C.M. 1947, 76-110(3) thru (5).**

76-15-711 through 76-15-720 reserved.

76-15-721. Board of adjustment. (1) Where the supervisors of a district adopt an ordinance prescribing land use regulations in accordance with 76-15-701 through 76-15-707, they shall further provide by ordinance for the establishment of a board of adjustment.

(2) The board of adjustment shall consist of three members, each to be appointed for a term of 3 years, except that the members first appointed shall be appointed for terms of 1, 2, and 3 years, respectively.

(3) The members of each board of adjustment shall be appointed by the department with the advice and approval of the supervisors of the district for which the board has been established and may be removed by the department, upon notice and hearing, for neglect of duty or malfeasance in office but for no other reason, the hearing to be conducted jointly by the department and the supervisors of the district. Members of the board of natural resources and conservation, employees of the department, and the supervisors of the district are ineligible to appointment as members of the board of adjustment.

(4) Vacancies in the board of adjustment shall be filled in the same manner as original appointments and shall be for the unexpired term of the member whose term becomes vacant.

(5) The members of the board of adjustment shall receive compensation for their services at the rate of $4 per day for time spent on the work of the board in addition to expenses, including travel expenses, as provided for in 2-18-501 through 2-18-503, necessarily incurred in the discharge of their duties. The supervisors shall pay the necessary administrative and other expenses of operation incurred by the board upon the certificate of the chairman of the board.

History: En. Sec. 11, Ch. 72, L. 1939; amd. Sec. 10, Ch. 431, L. 1971; amd. Sec. 93, Ch. 253, L. 1974; amd. Sec. 53, Ch. 439, L. 1975; R.C.M. 1947, 76-111(1).

76-15-722. Operation of board of adjustment. (1) The board of adjustment shall adopt rules to govern its procedures, which rules shall be in accordance with this chapter and with the ordinance establishing the board of adjustment.

(2) The board shall annually elect a chairman from among its members. Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine. Any two members of the board constitute a quorum. The chairman or in his absence such other member of the board as he may designate to serve as acting chairman may administer oaths and compel the attendance of witnesses.

(3) All meetings of the board shall be open to the public. The board shall keep a full and accurate record of all proceedings, of all documents filed with it, and of all orders entered, which shall be filed in the office of the board and shall be a public record.

History: En. Sec. 11, Ch. 72, L. 1939; amd. Sec. 10, Ch. 431, L. 1971; amd. Sec. 93, Ch. 253, L. 1974; amd. Sec. 53, Ch. 439, L. 1975; R.C.M. 1947, 76-111(2); amd. Sec. 21, Ch. 266, L. 1979.

76-15-723. Petition for a variance. (1) Any qualified elector may file a petition with the board of adjustment alleging that there are great practical difficulties or unnecessary hardship in the way of his carrying out upon his lands the strict letter of the land use regulations prescribed by ordinance approved by the supervisors and praying the board to authorize a variance from the terms of the land use regulations in the application of the regulations to the lands occupied by the petitioner.

(2) Copies of the petition shall be served by the petitioner upon the chairman of the supervisors of the district within which his lands are located and upon the department.

History: En. Sec. 11, Ch. 72, L. 1939; amd. Sec. 10, Ch. 431, L. 1971; amd. Sec. 93, Ch. 253, L. 1974; amd. Sec. 53, Ch. 439, L. 1975; R.C.M. 1947, 76-111(part).

76-15-724. Hearing on petition for a variance. (1) The board of adjustment shall fix a time for the hearing of the petition and cause due notice of the hearing to be given.

(2) The supervisors of the district and the department are entitled to appear and be heard at the hearing. A qualified elector within the district who objects to the authorizing of the variance prayed for may intervene and become a party to the proceedings. A party to the hearing before the board may appear in person, by agent, or by attorney.

History: En. Sec. 11, Ch. 72, L. 1939; amd. Sec. 10, Ch. 431, L. 1971; amd. Sec. 93, Ch. 253, L. 1974; amd. Sec. 53, Ch. 439, L. 1975; R.C.M. 1947, 76-111(part).

76-15-725. Board decision. (1) If, upon the facts presented at the hearing, the board determines that there are great practical difficulties or unnecessary hardship in the way of applying the strict letter of any of the land use regulations upon the lands of the petitioner, it shall make and record that determination and shall make and record findings of fact as to the specific conditions which establish the great practical difficulties or unnecessary hardship.

(2) Upon the basis of the findings and determination, the board may order a variance from the terms of the land use regulations in their application to the lands of the petitioner that will relieve the great practical difficulties or unnecessary hardship; will not be contrary to the public interest; and will be such that the spirit of the land use regulations is observed, the public health, safety, and welfare is secured, and substantial justice is done.

History: En. Sec. 11, Ch. 72, L. 1939; amd. Sec. 10, Ch. 431, L. 1971; amd. Sec. 93, Ch. 253, L. 1974; amd. Sec. 53, Ch. 439, L. 1975; R.C.M. 1947, 76-111(part); amd. Sec. 22, Ch. 266, L. 1979.

76-15-726. Appeal to district court from board decision. (1) A petitioner aggrieved by an order of the board granting or denying, in whole or in part, the relief sought; the supervisors of the district; or an intervening party may obtain a review of the order in any district court of the county in which the lands of the petitioner lie by filing in the court a petition praying that the order of the board be modified or set aside.

(2) A copy of the petition shall immediately be served upon the parties to the hearing before the board, and thereupon the party seeking review shall file in the court a transcript of the entire record in the proceedings, certified by the board, including the documents and testimony upon which the order complained of was entered and the findings, determination, and order of the board.

History: En. Sec. 11, Ch. 72, L. 1939; amd. Sec. 10, Ch. 431, L. 1971; amd. Sec. 93, Ch. 253, L. 1974; amd. Sec. 53, Ch. 439, L. 1975; R.C.M. 1947, 76-111(part).

76-15-727. Court proceedings. (1) Upon the filing, the court shall cause notice thereof to be served upon the parties, and the court has jurisdiction of the proceedings and of the questions determined or to be determined therein and may grant such temporary relief as it deems just and proper and make and enter a decree enforcing, modifying and enforcing as so modified, or setting aside, in whole or in part, the order of the board.

(2) A contention that is not urged before the board may not be considered by the court unless the failure or neglect to urge the contention is

excused because of extraordinary circumstances. The findings of the board as to the facts, if supported by evidence, are conclusive.

(3) If a party applies to the court for leave to produce additional evidence and shows to the satisfaction of the court that the evidence is material and that there are reasonable grounds for the failure to produce the evidence in the hearing before the board, the court may order the additional evidence to be taken before the board and to be made a part of the transcript. The board may modify its findings as to the facts or make new findings, taking into consideration the additional evidence so taken and filed, and it shall file the modified or new findings which, if supported by evidence, are conclusive and shall file with the court its recommendations, if any, for the modification or setting aside of its original order.

(4) The jurisdiction of the court is exclusive and its judgment and decree are final, except that they are subject to review in the same manner as are other judgments or decrees of the court.

History: En. Sec. 11, Ch. 72, L. 1939; amd. Sec. 10, Ch. 431, L. 1971; amd. Sec. 93, Ch. 253, L. 1974; amd. Sec. 53, Ch. 439, L. 1975; R.C.M. 1947, 76-111(part).

Part 8

Alteration and Termination of Conservation Districts

76-15-801. Change of district name. Petitions for changing the name of a district organized under this chapter may be filed with the department. The petition shall be signed by a majority of the district supervisors and shall state the present name of the district and the proposed new name. If the department determines that the proposed new name is not identical with or so similar to that of any other district in the state as to lead to confusion or uncertainty, it shall present a statement of that determination to the secretary of state, who shall issue to the district a certificate, under the seal of the state, evidencing the change of name of the district. Upon the issuance of the certificate, the supervisors of the district shall cause due notice to be given of the change of the name of the district.

History: En. 76-117 by Sec. 1, Ch. 46, L. 1951; amd. Sec. 1, Ch. 41, L. 1959; amd. Sec. 13, Ch. 431, L. 1971; amd. Sec. 96, Ch. 253, L. 1974; R.C.M. 1947, 76-117(1).

76-15-802. Procedure to add territory to a district. Petitions for including additional territory within an existing district may be filed with the department, and the proceedings provided for in part 2 in the case of petitions to organize a district shall be followed in the case of petitions for the inclusion. The department shall prescribe the form for the petitions, which shall be as nearly as may be in the form prescribed in part 2 for petitions to organize a district. Where the total number of qualified electors in the area proposed for inclusion is less than 10, the petition may be filed when signed by a majority of the qualified electors of the area, and in that case no referendum need be held. In referenda upon petitions for the inclusion, all qualified electors within the proposed additional area are eligible to vote.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(10).

76-15-803. Combination or division of districts. (1) A petition may be filed with the department for the division of any district or the combination of any two or more districts or for the division of a district and the combination of any divided part thereof with any other district. Any or all of these actions may be initiated by the filing of a single petition with the department. The petition shall be signed by a majority of the members of each of the governing bodies of the affected districts. The department shall prescribe the form for the petition. Upon the filing of the petition, the department shall within 30 days give due notice of public hearing upon the petition. All qualified electors within the affected districts and all other interested parties are entitled to attend the hearing and be heard. After the hearing, the board of natural resources and conservation upon the record of the hearing shall determine whether the proposed division, the combination, or division and combination of territory is administratively practicable and feasible. In making the determination the board shall give due regard to the legislative determinations set forth in 76-15-101 and 76-15-102 and to the considerations enumerated in 76-15-201 through 76-15-216, to the extent applicable, relative to determining the practicability and feasibility of creating a district.

(2) If the board determines that the proposed division, combination, or division and combination is administratively practicable and feasible, the board shall effect the proposed division, combination, or division and combination by filing with the secretary of state a statement certifying the changes made in the boundaries of the affected districts, together with any change in the name of the districts. If the determination is in the negative, the board shall make and record that determination and shall deny the petition. After 6 months from the denial of the petition, a new petition may be filed.

(3) Upon the division of a district, the supervisors thereof shall allocate the property, rights, and liabilities (including contractual obligations) of the district among the resulting parts of the district, giving due consideration to the proportionate size of each divided part, the number of qualified electors and operating units, the degree and extent of soil erosion therein, and other relevant factors. A statement of the allocation shall be filed with the department within 30 days after the notification of the board's determination in favor of the division of the district. Upon the failure of the supervisors to make or to agree upon the allocation, it shall be made by the department after such hearing as the department considers necessary and with due regard for the standards set out in this subsection for making the allocations.

History: En. 76-117 by Sec. 1, Ch. 46, L. 1951; amd. Sec. 1, Ch. 41, L. 1959; amd. Sec. 13, Ch. 431, L. 1971; amd. Sec. 96, Ch. 253, L. 1974; R.C.M. 1947, 76-117(2) thru (4).

76-15-804. Petition to discontinue all or part of a district. (1) At any time after 5 years after the organization of a district under this chapter, any 10 qualified electors within the boundaries of the district may file a petition with the department praying that the board terminate the operations of the district or a part of the district and discontinue the existence of the district or that part of the district.

(2) The department may conduct such public meetings and public hearings upon the petition as are necessary to assist it and the board in the consideration thereof.

History: En. Sec. 14, Ch. 72, L. 1939; amd. Sec. 11, Ch. 431, L. 1971; amd. Sec. 94, Ch. 253, L. 1974; amd. Sec. 5, Ch. 18, L. 1977; R.C.M. 1947, 76-114(1).

76-15-805. Referendum on question of discontinuance. (1) Within 60 days after the petition has been received by the department, it shall give due notice of the holding of a referendum and shall supervise the referendum and issue appropriate regulations governing the conduct thereof. The question is to be submitted by ballots upon which the words "For terminating the existence of the .... (name of the conservation district or part of the district to be here inserted)" and "Against terminating the existence of the .... (name of the conservation district or part of the district to be here inserted)" shall appear with the square before each proposition and a direction to insert an "X" mark in the square before one or the other of the propositions as the voter may favor or oppose discontinuance of the district or a part of the district.

(2) All qualified electors within the boundaries of the district are eligible to vote in the referendum. No informalities in the conduct of the referendum or in any matters relative thereto shall invalidate the referendum or the result thereof if notice thereof is given substantially as herein provided and the referendum is fairly conducted.

History: En. Sec. 14, Ch. 72, L. 1939; amd. Sec. 11, Ch. 431, L. 1971; amd. Sec. 94, Ch. 253, L. 1974; amd. Sec. 5, Ch. 18, L. 1977; R.C.M. 1947, 76-114(2).

76-15-806. Board decision in case of petition for discontinuance of entire district. (1) In the case of petitions for discontinuance of a district, the department shall publish the result of the referendum and the board shall thereafter consider and determine whether the continued operation of the district within the defined boundaries is administratively practicable and feasible.

(2) If the board determines that the continued operation of the district is administratively practicable and feasible, it shall record that determination and deny the petition.

(3) If the board determines that the continued operation of the district is not administratively practicable and feasible, it shall record that determination and shall certify the determination to the supervisors of the district.

History: En. Sec. 14, Ch. 72, L. 1939; amd. Sec. 11, Ch. 431, L. 1971; amd. Sec. 94, Ch. 253, L. 1974; amd. Sec. 5, Ch. 18, L. 1977; R.C.M. 1947, 76-114(3)(a).

76-15-807. Board decision in case of petition for discontinuance of portion of district. (1) In the case of petitions for discontinuance of part of a district, the department shall publish the result of the referendum and the board shall thereafter consider and determine whether the continued operation of a part of the district within the defined boundaries is administratively practicable and feasible.

(2) If the board determines that the continued operation of the district is not administratively practicable and feasible with a part of the district discontinued, it shall record that determination and deny the petition.

(3) If the board determines that the continued operation of the district is administratively practicable and feasible with a part of the district discontinued, it shall record that determination and shall certify the determination to the supervisors of the district.

History: En. Sec. 14, Ch. 72, L. 1939; amd. Sec. 11, Ch. 431, L. 1971; amd. Sec. 94, Ch. 253, L. 1974; amd. Sec. 5, Ch. 18, L. 1977; R.C.M. 1947, 76-114(3)(b).

76-15-808. Criteria for board decision on discontinuance. (1) In making the determination, the board shall give due regard and weight to the attitudes of the qualified electors lying within the district, the number of qualified electors eligible to vote in the referendum who voted, the proportion of the votes cast in the referendum in favor of the discontinuance of the district or part of the district to the total number of votes cast, the approximate wealth and income of the qualified electors of the district, the probable expense of carrying on erosion control operations within the district, and such other economic and social factors as may be relevant to the determination, having due regard to the legislative findings set forth in 76-15-101 and 76-15-102.

(2) However, the board may not determine that the continued operation of the district or part of the district is administratively practicable and feasible unless at least a majority of the votes cast in the referendum are cast in favor of the continuance of the district or part of the district.

History: En. Sec. 14, Ch. 72, L. 1939; amd. Sec. 11, Ch. 431, L. 1971; amd. Sec. 94, Ch. 253, L. 1974; amd. Sec. 5, Ch. 18, L. 1977; R.C.M. 1947, 76-114(4).

76-15-809. Procedure to terminate district. (1) Upon receipt from the department of a certification of the board that the board has determined that the continued operation of the district or part of the district is not administratively practicable and feasible, pursuant to 76-15-804 through 76-15-810, the supervisors shall immediately proceed to terminate the affairs of the district or part of the district.

(2) The supervisors shall dispose of all property belonging to the district or part of the district at public auction and shall pay over the proceeds of the sale to be covered into the state treasury.

(3) The supervisors shall thereupon file an application, duly verified, with the secretary of state for the discontinuance of the district or part of the district and shall transmit with the application the certificate of the board, setting forth the determination of the board that the continued operation of the district or part of the district is not administratively practicable and feasible. The application shall recite that the property of the district or part of the district has been disposed of and the proceeds paid over as provided in 76-15-804 through 76-15-810 and shall set forth a full accounting of the properties and proceeds of the sale.

(4) The secretary of state shall issue to the supervisors a certificate of dissolution and shall record the certificate in an appropriate book of record in his office.

History: En. Sec. 14, Ch. 72, L. 1939; amd. Sec. 11, Ch. 431, L. 1971; amd. Sec. 94, Ch. 253, L. 1974; amd. Sec. 5, Ch. 18, L. 1977; R.C.M. 1947, 76-114(5).

76-15-810. Effect of termination. (1) Upon issuance of a certificate of dissolution under 76-15-809, all ordinances and regulations theretofore adopted and in force within the district or in that part of the district are void.

(2) All contracts previously entered into, to which the district or supervisors are parties, remain in effect for the period provided in those contracts. The department shall be substituted for the district or supervisors as party to the contracts if the total district is discontinued. In this case the department is entitled to all benefits and subject to all liabilities under the contracts and has the same right and liability to perform, to require

performance, to sue and be sued thereon, and to modify or terminate the contracts by mutual consent or otherwise as the supervisors of the district would have had.

(3) The dissolution does not affect the lien of any judgment entered under 76-15-708 through 76-15-710 or the pendency of an action instituted under those sections, and the department succeeds to all rights and obligations of the district or supervisors as to those liens and actions.

History: En. Sec. 14, Ch. 72, L. 1939; amd. Sec. 11, Ch. 431, L. 1971; amd. Sec. 94, Ch. 253, L. 1974; amd. Sec. 5, Ch. 18, L. 1977; R.C.M. 1947, 76-114(6).

CHAPTER 16

GRAZING DISTRICTS

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Part 4 — Grazing Permit System

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76-16-406. Transfer of preferences.
76-16-407. Processing of application for transfer.
76-16-408. Effect of transfer of preference.
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76-16-410. Compensation to district for range improvements.
76-16-411. Grazing permits to owners of land not controlled by district.
76-16-412. Revocation of preferences upon failure to obtain permits, pay fees, or obey rules.
76-16-413. Effect of revocation.
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Part 1

General Provisions

76-16-101. Short title. This chapter may be cited as the "Grass Conservation Act".

History: En. Sec. 1, Ch. 208, L. 1939; amd. Sec. 35, Ch. 253, L. 1974; R.C.M. 1947, 46-2301(part).

76-16-102. Purpose. The purpose of this chapter is to provide for the conservation, protection, restoration, and proper utilization of grass, forage, and range resources of the state of Montana, to provide for the incorporation of cooperative nonprofit grazing districts, to provide a means of cooperation with the secretary of the interior as provided in the federal act known as the Taylor Grazing Act and any other governmental agency or department having jurisdiction over lands belonging to the United States or other state or federal agency as well as agencies having jurisdiction over federal lands, to permit the setting up of a form of grazing administration which will aid in the unification or control of all grazing lands within the state where the ownership is diverse and the lands intermingled, and to provide for the stabilization of the livestock industry and the protection of dependent commensurate ranch properties as defined herein.

History: En. Sec. 1, Ch. 208, L. 1939; amd. Sec. 35, Ch. 253, L. 1974; R.C.M. 1947, 46-2301(part).

76-16-103. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Animal unit" means one cow, one horse, or five sheep, 6 months old or over.

(2) "Assessment" means a special levy imposed on permittee members by the state district to raise funds for specific purposes as provided in 76-16-323(1) and does not include fees.

(3) "Board" means the board of natural resources and conservation provided for in 2-15-3302, except where the term is used in connection with the board of directors of a state district.

(4) "Commensurate property" means land privately owned or controlled which is not range as herein defined.

(5) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(6) "Dependent commensurate property" is commensurate property which requires the use of range in connection with it to maintain its proper use and which produces or whose owner furnishes as part of his past customary practice the proper feed necessary to maintain livestock during the time other than the established grazing period on the range and which has been used in connection with the range for a period of any 3 years or for any 2 consecutive years in the 5-year period immediately preceding June 28, 1934, or in the case of districts organized after March 15, 1945, for a 5-year period immediately preceding the date of organization of such districts.

(7) "Grazing preference" is a right to obtain a grazing permit from a state district.

(8) "Permits" are evidence of grazing privileges granted by state districts.

(9) "Person" means a natural person or persons, unincorporated associations, partnerships, corporations, and governmental departments or agencies.

(10) "Range" is the land within a grazing district upon which grazing permits are granted to maintain livestock through the established grazing period.

(11) "State district" means a nonprofit cooperative organization incorporated under this chapter and its board of directors and also includes all lands owned or controlled by the state district or its members.

History: En. Sec. 2, Ch. 208, L. 1939; amd. Sec. 1, Ch. 199, L. 1945; amd. Sec. 36, Ch. 253, L. 1974; R.C.M. 1947, 46-2302(part).

76-16-104. Role of the department. (1) The department of natural resources and conservation shall assist in carrying out the purposes of this chapter, act in an advisory capacity with the department of state lands and boards of county commissioners, and supervise and coordinate the formation and operation of districts which may be incorporated under this chapter.

(2) The department may act in an advisory capacity to the department of state lands and boards of county commissioners for the purpose of working out uniform plans for the use of lands lying within or without the boundaries of state districts in conformity with recognized conservation and stabilization policies.

History: En. Secs. 1, 17, Ch. 208, L. 1939; amd. Secs. 35, 47, Ch. 253, L. 1974; R.C.M. 1947, 46-2301(part), 46-2317.

76-16-105. Powers of the department. The department may:

(1) prepare and standardize various forms to be used by the state districts and supervise or regulate the organization and operation of state districts;

(2) issue citations directed to any person requiring his attendance before the department or the board and subpoena witnesses and pay such expenses as would be allowed in a court action;

(3) require an officer or director of a state district to submit records of the state district to the department for the purpose of aiding an investigation conducted by the department;

(4) hold hearings on any matters affecting the department;

(5) require state districts to furnish itemized financial reports annually;

(6) cooperate and enter into agreements on behalf of a state district, with its consent, with any governmental subdivision, department, or agency in order to promote the purposes of this chapter.

History: En. Sec. 7, Ch. 208, L. 1939; amd. Sec. 2, Ch. 199, L. 1945; amd. Sec. 37, Ch. 253, L. 1974; R.C.M. 1947, 46-2307(part).

76-16-106. Department fees. (1) The department may impose fees against the several state grazing districts of the state in an amount not in excess of 15 cents per animal unit, based upon the number of animal units per year for which the district grants permits, to defray expenses incurred by the department in carrying out its powers and duties under this chapter.

(2) These fees shall be held in the earmarked revenue fund to be expended by order and direction of the department for the administration of the department's functions under this chapter.

(3) If a state district fails or refuses to pay the fee on or before October 1 of each year and after the district is provided with a full report from the department of all money collected and expended by it for its fiscal year next preceding that date, the department may compel and levy collection and payment by writ of mandate or other appropriate remedy against the state district.

History: En. Sec. 29, Ch. 208, L. 1939; amd. Sec. 1, Ch. 241, L. 1961; amd. Sec. 156, Ch. 147, L. 1963; amd. Sec. 1, Ch. 20, L. 1971; amd. Sec. 52, Ch. 253, L. 1974; R.C.M. 1947, 46-2331; amd. Sec. 1, Ch. 34, L. 1981.

Compiler's Comments

1981 Amendment: Increased the fee from 10 cents to 15 cents per animal unit.

76-16-107. Range for wild game animals. In each state district a sufficient carrying capacity of range shall be reserved for the maintenance of a reasonable number of wild game animals to use the range in common with livestock grazing in the district. The department may act in an advisory capacity to the department of fish, wildlife, and parks in the protection of wildlife within the boundaries of all state districts. The department shall encourage the transfer of beaver from streams where they are doing damage to other streams where they are needed.

History: En. Sec. 30, Ch. 208, L. 1939; amd. Sec. 53, Ch. 253, L. 1974; R.C.M. 1947, 46-2332; amd. Sec. 2, Ch. 218, L. 1979.

76-16-108. Nature of rights. (1) Preferences or rights under this chapter through the creation of the district or the issuance of permits or preferences are statutory and do not create any vested right, title, interest, or estate in or to the lands owned or controlled by the district excepting as herein provided.

(2) Any person who chooses to become a member of any state district is bound by all the provisions of this chapter and is limited to the statutory remedies therein contained, and no court shall have jurisdiction to consider any right claimed under this chapter excepting only by judicial review from the final decision of the commission as herein provided.

History: (1)En. Sec. 14, Ch. 208, L. 1939; amd. Sec. 2, Ch. 163, L. 1953; amd. Sec. 44, Ch. 253, L. 1974; Sec. 46-2314, R.C.M. 1947; (2)En. Sec. 8, Ch. 208, L. 1939; amd. Sec. 3, Ch. 199, L. 1945; amd. Sec. 1, Ch. 163, L. 1953; amd. Sec. 38, Ch. 253, L. 1974; Sec. 46-2308, R.C.M. 1947; R.C.M. 1947, 46-2308(part), 46-2314(3).

76-16-109. Appeal procedure. (1) Notice of a decision of a state district shall be given in writing by the secretary of the state district to the interested parties or their attorneys by registered or certified mail at the address as shown on the records of the district.

(2) A person affected by the decision of a state district may appeal therefrom to the board which shall hear and decide all those appeals. An appeal from the decision of the district to the board may be taken by filing written notice of the appeal with the department and by filing a copy of the notice of appeal with the secretary of the district and by serving a copy of the notice of appeal by registered or certified mail upon any interested parties who have appeared or their attorneys within 60 days after receiving written notice of the decision of the district. The appellant shall also file with the department proof by affidavit of the filing and service of the notice of appeal. The appeal to the board shall be taken and review thereof had upon the record of any hearing conducted and considered by the state district; however, the board may, at its discretion and for good cause shown, permit additional testimony to be submitted.

History: En. Sec. 8, Ch. 208, L. 1939; amd. Sec. 3, Ch. 199, L. 1945; amd. Sec. 1, Ch. 163, L. 1953; amd. Sec. 38, Ch. 253, L. 1974; R.C.M. 1947, 46-2308(part).

76-16-110. Administrative procedure act applicable. The Montana Administrative Procedure Act applies to this chapter.

History: En. Sec. 8, Ch. 208, L. 1939; amd. Sec. 3, Ch. 199, L. 1945; amd. Sec. 1, Ch. 163, L. 1953; amd. Sec. 38, Ch. 253, L. 1974; R.C.M. 1947, 46-2308(3).

76-16-111. What constitutes receipt of notice. In all cases where notices are given permittees under this chapter by registered or certified mail and addressed to the post-office address of the permittee as shown by the records of the state district, the notices shall be considered received by the permittee when deposited in the United States post office by the district or by the department.

History: En. Sec. 22, Ch. 208, L. 1939; amd. Sec. 4, Ch. 163, L. 1953; amd. Sec. 1, Ch. 24, L. 1971; amd. Sec. 49, Ch. 253, L. 1974; R.C.M. 1947, 46-2322(8).

Part 2

Establishment of Districts

76-16-201. Procedure to incorporate state district. (1) If three or more persons who own or control commensurate property and are livestock operators within the area proposed to be created into a state district decide to incorporate a state district, they shall submit a statement in writing to the department together with a plat showing the proposed boundaries of the area.

(2) The statement shall set forth the name of the proposed state district, the county or counties in which the proposed state district is located, and the names and addresses of all operators of land and livestock units within the area. The department may require any additional information it considers necessary.

(3) On receipt of the statement and plat and any additional information, the department shall fix a time and place of a hearing for approval within the district or county, which may not be less than 30 days or more than 60 days after receipt of the statement.

History: En. Sec. 9, Ch. 208, L. 1939; amd. Sec. 4, Ch. 199, L. 1945; amd. Sec. 39, Ch. 253, L. 1974; R.C.M. 1947, 46-2309(part).

76-16-202. Notice and hearing on question of incorporation. (1) The persons deciding to incorporate the state grazing district shall then cause notice of the hearing to be given by publishing a notice prescribed by the department once a week for 2 consecutive weeks, the first publication to be at least 30 days prior to the date of hearing, in a newspaper of general circulation in the area.

(2) The department for and on behalf of the board shall hear evidence offered in support of or in opposition to the creation of the state district and shall make a full inquiry into the advisability of its creation. The record taken upon the hearing, together with the report of the department, shall be submitted to the board.

History: En. Sec. 9, Ch. 208, L. 1939; amd. Sec. 4, Ch. 199, L. 1945; amd. Sec. 39, Ch. 253, L. 1974; R.C.M. 1947, 46-2309(part).

76-16-203. Certificate of approval. If the creation of the state district appears feasible, beneficial, and desirable to those who own or control more than 50% of the lands to be included in the district, the board may issue a certificate of approval.

History: En. Sec. 9, Ch. 208, L. 1939; amd. Sec. 4, Ch. 199, L. 1945; amd. Sec. 39, Ch. 253, L. 1974; R.C.M. 1947, 46-2309(part).

76-16-204. Articles of incorporation. (1) Upon the issuance of the certificate of approval, three or more persons who own or control commensurate property and are livestock operators within or near the proposed state district may prepare articles of incorporation and file them in the office of the secretary of state without payment of fees.

(2) The articles shall be accompanied by the certificate of approval and signed, sealed, and acknowledged. The articles, as prescribed by the department, shall substantially state the following:

(a) the name of the state district, the last four words of which shall be "cooperative state grazing district";

(b) the county or counties in which the state district is located and the place where the principal office and business of the state district will be conducted;

(c) the membership fee for each member of the state district, which may not be more than $5;

(d) the term for which the state district is incorporated, which may not exceed 40 years;

(e) the names and residences of the persons who subscribe, together with a statement that each owns or controls commensurate property and is a livestock operator within the proposed state district;

(f) the powers of the state district, which may not be inconsistent with this chapter;

(g) the officers of the state district, their principal duties, and the principal duties of the board of directors;

(h) the purpose for which the state district is incorporated.

History: **En. Sec. 10, Ch. 208, L. 1939; amd. Sec. 40, Ch. 253, L. 1974; R.C.M. 1947, 46-2310(part).**

76-16-205. Issuance of certificate of incorporation. If the articles substantially comply with the requirements set forth in 76-16-204 and are accompanied by the certificate of approval, the secretary of state shall issue to the state district a certificate of incorporation.

History: **En. Sec. 10, Ch. 208, L. 1939; amd. Sec. 40, Ch. 253, L. 1974; R.C.M. 1947, 46-2310(part).**

76-16-206. Amending articles of incorporation. (1) A state district may amend its articles of incorporation by a two-thirds vote of all members present at any regular or special meeting of its members and the approval of the department. The only notice of the meeting which is necessary is the notice of meetings of members as required by the bylaws of the district. The amended articles of incorporation and bylaws shall be submitted to the department for approval. Upon approval, the department shall issue a certificate of approval. The amended articles of incorporation shall be filed by the secretary of state without charge, but may not be filed unless accompanied by the certificate of approval. If the articles of incorporation are amended, the amendment shall be filed with the county clerk or clerks.

(2) Upon the filing of the amended articles with the secretary of state and the proper county clerk or clerks, the district possesses the same powers and shall be subject to the same obligations as if incorporated under this chapter.

History: **En. Secs. 11, 18, Ch. 208, L. 1939; amd. Secs. 41, 48, Ch. 253, L. 1974; R.C.M. 1947, 46-2311(part), 46-2318.**

76-16-207. Filing of map or plat of district. A state district shall, upon completion of its organization, file with the county clerk and recorder of each county in which its lands lie a map or plat of the external boundaries of the state district and a copy of its articles of incorporation. If the boundaries of a state district are changed and the changes are approved by the board after a hearing thereon before the department, the state district shall file with the county clerk or clerks a map or plat indicating the changed boundaries.

History: **En. Sec. 11, Ch. 208, L. 1939; amd. Sec. 41, Ch. 253, L. 1974; R.C.M. 1947, 46-2311(part).**

76-16-208. Adoption of bylaws. A state district incorporated under this chapter shall within 60 days after its incorporation adopt bylaws approved by the department. The bylaws may be amended or revised with the approval of the department.

History: **En. Sec. 15, Ch. 208, L. 1939; amd. Sec. 45, Ch. 253, L. 1974; R.C.M. 1947, 46-2315.**

76-16-209. Alteration of district. (1) A state district may change the boundaries of the district, merge with another state district organized under this chapter, or subdivide.

(2) A merger may not be made unless consented to by a majority of the members of each merging state district and approved by the board after a hearing thereon before the department.

(3) A subdivision may not be made unless consented to by a majority of the members in the affected area and approved by the board after a hearing thereon before the department.

History: **En. Sec. 12, Ch. 208, L. 1939; amd. Sec. 42, Ch. 253, L. 1974; amd. Sec. 1, Ch. 22, L. 1977; R.C.M. 1947, 46-2312(11).**

76-16-210. Request for dissolution of district. A state district with the written consent of three-fourths of its permittee members may at any time request the board of natural resources and conservation to dissolve the state district.

History: **En. Sec. 25, Ch. 208, L. 1939; amd. Sec. 6, Ch. 163, L. 1953; amd. Sec. 51, Ch. 253, L. 1974; R.C.M. 1947, 46-2325(part).**

76-16-211. Dissolution of district by board. (1) If a state district ceases to function and it appears to the board that the reinstatement and future operation of the district is no longer feasible, beneficial, and desirable to those who own or control more than 50% of the lands included in the district, the board, after a hearing thereon and upon 30 days' notice in writing, published for 2 consecutive weeks in a newspaper of general circulation in or nearest to the district, may dissolve the district.

(2) A notice of the dissolution shall be filed by the department with the secretary of state and the clerk and recorder of the county or counties in which the district is located.

History: **En. Sec. 7, Ch. 208, L. 1939; amd. Sec. 2, Ch. 199, L. 1945; amd. Sec. 37, Ch. 253, L. 1974; R.C.M. 1947, 46-2307(1)(b).**

76-16-212. Distribution of district assets. (1) When a hearing on the request for dissolution has been held before the department and the board's consent has been given, the directors shall distribute the assets of the state district, either in items of property or in cash or in both. Distribution shall first be made with the approval of the department to creditors up to the amount of their claims. Distribution shall then be made with the approval of the department to permittee members upon the basis of their proportionate interest in the assets.

(2) If assets must be liquidated, the directors shall offer them for sale at public auction after publication of a notice of the sale once a week for 2 successive weeks in a newspaper of general circulation within the state district.

History: **En. Sec. 25, Ch. 208, L. 1939; amd. Sec. 6, Ch. 163, L. 1953; amd. Sec. 51, Ch. 253, L. 1974; R.C.M. 1947, 46-2325(part).**

76-16-213. Final report on dissolution proceedings. A final report of all dissolution proceedings shall be made to the department by the directors. Upon the approval of the report by the department, the board shall order the state district dissolved.

History: En. Sec. 25, Ch. 208, L. 1939; amd. Sec. 6, Ch. 163, L. 1953; amd. Sec. 51, Ch. 253, L. 1974; R.C.M. 1947, 46-2325(part).

Part 3

Organization, Administration, and Operation

76-16-301. Powers and duties of directors. The directors of the state district shall manage and exercise the powers of the state district subject to its bylaws and to the regulation of the department as provided in this chapter.

History: En. Sec. 13, Ch. 208, L. 1939; amd. Sec. 43, Ch. 253, L. 1974; R.C.M. 1947, 46-2313.

76-16-302. Membership in district. (1) Membership in the district is limited to persons engaged in the livestock business who own or lease forage-producing lands within or near the district, except that the agent of a person entitled to membership in the district may become a member in place of his principal.

(2) If an agent becomes a member, his qualifications for membership and his obligations to and the privileges in the district shall be measured by those his principal would have had if he had elected to become a member. An agent and his principal may not both be members of the district unless the agent has individual qualifications for membership which are separable from and independent of those of his principal.

(3) All members who possessed preferential grazing permits during the preceding grazing season or who possess such a permit at the time of voting shall be designated as permittee members.

History: En. Sec. 14, Ch. 208, L. 1939; amd. Sec. 2, Ch. 163, L. 1953; amd. Sec. 44, Ch. 253, L. 1974; R.C.M. 1947, 46-2314(part).

76-16-303. Voting rights. Permittee members only are entitled to vote on all issues submitted to a vote of the members. A permittee member has only one vote. Voting by proxy may not be permitted.

History: En. Sec. 14, Ch. 208, L. 1939; amd. Sec. 2, Ch. 163, L. 1953; amd. Sec. 44, Ch. 253, L. 1974; R.C.M. 1947, 46-2314(part).

76-16-304. Effect of transfer of land. When a member disposes of a part of the lands or leases owned by him so that another person becomes the owner of the lands or leases and acquires the right to membership, then the rights and interest involved shall be determined by the directors of the state district with the approval of the department.

History: En. Sec. 14, Ch. 208, L. 1939; amd. Sec. 2, Ch. 163, L. 1953; amd. Sec. 44, Ch. 253, L. 1974; R.C.M. 1947, 46-2314(2).

76-16-305. Acquisition and disposal of property. A state district may:

(1) purchase or market livestock and livestock products and purchase supplies and equipment. These supplies may include among other things

grass, grass seed, or forage, whether attached to and upon or severed from the land.

(2) acquire forage-producing lands, including agricultural lands when necessary to comply with the purposes and directives of this chapter, by lease, purchase, cooperative agreements, or otherwise, either from the United States, the state of Montana, or the county or counties in which the lands are located or from private owners. All lands to which a state district may acquire title may be disposed of by exchange, sale, or otherwise;

(3) acquire or construct fences, reservoirs, or other facilities for the care of livestock and lease or purchase lands for such purposes.

History: En. Sec. 12, Ch. 208, L. 1939; amd. Sec. 42, Ch. 253, L. 1974; amd. Sec. 1, Ch. 22, L. 1977; R.C.M. 1947, 46-2312(1), (3), (5).

76-16-306. Management of grazing lands. A state district may:

(1) manage and control the use of its range and agricultural lands acquired under 76-16-305(2). This power includes the right to determine the size of preferences and permit according to a fixed method which shall be stated in the bylaws and which shall take into consideration the rating of dependent commensurate property and the carrying capacity of the range and may be subject to reservations, regulations, and limitations under the terms of agreements between the state district and any agency of the United States. The state district may also allot range to members or nonmembers and decrease or increase the size of permits if the range carrying capacity changes.

(2) undertake reseeding and other approved conservation and improvement practices of depleted range areas or abandoned farm lands and enter into cooperative agreements with the federal government or any other person for the reseeding or conservation and improvement practices;

(3) employ and discharge employees, riders, and other persons necessary to properly manage the state district.

History: En. Sec. 12, Ch. 208, L. 1939; amd. Sec. 42, Ch. 253, L. 1974; amd. Sec. 1, Ch. 22, L. 1977; R.C.M. 1947, 46-2312(4), (8), (13); amd. Sec. 23, Ch. 266, L. 1979.

76-16-307. Requirement to lease available state lands. State land situated within the boundaries of a grazing district created under this chapter, not otherwise disposed of by the department of state lands, must be leased by the grazing district at a reasonable rental when offered for lease to the officers of the grazing district by that department. However, the officers of the grazing district may appear or submit evidence in writing before the department of state lands and show reason and cause for a change in the rental. If there is cause, the department of state lands may reappraise the land in question. The department of natural resources and conservation shall require that all state districts comply with this section.

History: En. Sec. 16, Ch. 208, L. 1939; amd. Sec. 46, Ch. 253, L. 1974; R.C.M. 1947, 46-2316.

76-16-308. Regulation of stock grazing in district. A state district may:

(1) specify the breed, quality, and number of male breeding animals which each member must furnish when stock is grazing in common in the state district;

(2) regulate the driving of stock over, across, into, or through the range and collect fees therefor;

(3) impose sanitary provisions, regulations, and practices.

History: En. Sec. 12, Ch. 208, L. 1939; amd. Sec. 42, Ch. 253, L. 1974; amd. Sec. 1, Ch. 22, L. 1977; R.C.M. 1947, 46-2312(7), (12).

76-16-309. Knowledge of district boundaries responsibility of livestock owner. A person herding or in control of livestock in the approximate vicinity of a state district shall ascertain the boundary lines of the district.

History: En. Sec. 11, Ch. 208, L. 1939; amd. Sec. 41, Ch. 253, L. 1974; R.C.M. 1947, 46-2311(part).

76-16-310. Permit required to run livestock in district. (1) No owner or person in control of livestock shall permit the same to run at large or under herd within the exterior boundaries of any state district unless the owner or person in control of such livestock shall first obtain a grazing permit for same from such state district.

(2) The owner or person in control of such livestock running at large or under herd within a state district without a permit from the district or in excess of such permit shall be liable for all damages sustained thereby by any member, permittee, or state district. If any such livestock wrongfully enters upon premises within such district, the owner or person in control of such trespassing livestock, who willfully or negligently permits same to run at large within the district without first obtaining a permit therefor from the district, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not less than $10 or more than $500 and, in addition to said punishment, shall be liable for all damages sustained thereby to the party entitled thereto.

(3) This provision shall not require any person to obtain a grazing permit to graze livestock upon land owned or controlled by him within such state district if the stock so grazed is restrained from running at large within such state district and from grazing upon any other lands within the state district.

History: En. Sec. 26, Ch. 208, L. 1939; amd. Sec. 7, Ch. 199, L. 1945; amd. Sec. 4, Ch. 257, L. 1955; R.C.M. 1947, 46-2326(1).

76-16-311. Control of trespassing livestock. (1) The state district or its duly authorized agent controlling the land upon which such wrongful entry is made by trespassing livestock may take into its possession such livestock and shall reasonably care for same while in its possession and may retain possession of said livestock and have a lien and claim thereon as security for payment of such damages and reasonable charges for the care of said livestock while in its possession.

(2) The state district taking up such livestock shall, within 72 hours after taking possession thereof, notify said owner, owners, or person in charge thereof by a notice in writing describing said livestock by number of animals and brands thereon, if any, the amount of damages claimed to date, and the charge per animal unit per day for caring for and feeding the same thereafter, such charges not to exceed 50 cents per animal unit per day, and describing by general description the location of the premises upon which said livestock is held and requiring such owner or owners, within 10 days

after receiving said notice, to take said livestock away after making full payment of all damages and costs of said livestock.

(3) In case the parties do not agree as to the amount of damages, the state district taking up such livestock may at the expense of the owner retain a sufficient amount of such livestock to cover the amount of damages claimed by the state district. However, the owner may, upon furnishing a good and sufficient bond, conditioned for the payment to the state district of all sums, including costs that may be recovered by said state district in a civil action to foreclose its lien, have returned to him all livestock held as aforesaid, and said state district shall be liable to such owner for any loss or injury to said livestock accruing through the state district's lack of reasonable care.

(4) If the state district taking up livestock shall fail to recover in a civil action a sum equal to that offered to the state district by the owner of the livestock, the former shall bear the expense of keeping and feeding same while in its possession. Such notice may be given by personal service on the said owner, owners, or person in charge thereof, by leaving said notice at his usual place of residence with some member of his family over the age of 14 years, or by sending said notice by prepaid registered or certified mail, addressed to his last known place of residence. Said service by registered or certified mail shall be deemed complete upon the deposit of said notice in the post office.

History: En. Sec. 26, Ch. 208, L. 1939; amd. Sec. 7, Ch. 199, L. 1945; amd. Sec. 4, Ch. 257, L. 1955; R.C.M. 1947, 46-2326(2), (3).

76-16-312. Impoundment of trespassing livestock. The state district or the party taking up such trespassing livestock may cause same to be impounded at any suitable place within the state district or within 5 miles from the exterior boundaries thereof, and such livestock shall be deemed legally impounded if placed in a corral or upon land enclosed by a legal fence or placed in charge of a herder or herders.

History: En. Sec. 26, Ch. 208, L. 1939; amd. Sec. 7, Ch. 199, L. 1945; amd. Sec. 4, Ch. 257, L. 1955; R.C.M. 1947, 46-2326(9).

76-16-313. Release of livestock. Upon demand, the state district or its authorized agent controlling the land or party in charge of such livestock shall release and deliver possession of such livestock to the owner or person entitled thereto upon payment of damages and charges, but said payment of damages and charges shall not act as a bar to the prosecution of said person, owner, or persons in control of such livestock, as hereinbefore provided.

History: En. Sec. 26, Ch. 208, L. 1939; amd. Sec. 7, Ch. 199, L. 1945; amd. Sec. 4, Ch. 257, L. 1955; R.C.M. 1947, 46-2326(part).

76-16-314. Recovery of excess charge for damages. If the amount of damages or costs demanded by the party taking up such livestock is in excess of the actual damage and actual costs, the owner or person in charge of such livestock may pay same under protest and thereafter sue to recover the amount paid in excess of the actual damages and reasonable costs, provided suit to recover same is filed in the district court within 60 days after payment.

History: En. Sec. 26, Ch. 208, L. 1939; amd. Sec. 7, Ch. 199, L. 1945; amd. Sec. 4, Ch. 257, L. 1955; R.C.M. 1947, 46-2326(part).

76-16-315. Procedure upon inability to locate person responsible for trespassing livestock. The state district taking up such livestock (if, after due diligence to discover the owner or possessor of such livestock, such owner or possessor cannot be found or the ownership of such livestock discovered) or the party taking up such livestock (if said owner or claimant shall refuse to pay the amount of damages or charges or furnish bonds therefor, as herein provided) shall, within 10 days from the time that said livestock was taken up, deliver to the sheriff or a constable of the county in which the livestock was taken up a statement containing the information required to be given in the notice, hereinbefore set out, and in addition thereto, he shall mail, by prepaid registered or certified mail, a copy of said statement addressed to the nearest state livestock inspector.

History: En. Sec. 26, Ch. 208, L. 1939; amd. Sec. 7, Ch. 199, L. 1945; amd. Sec. 4, Ch. 257, L. 1955; R.C.M. 1947, 46-2326(part).

76-16-316. Sale of trespassing livestock. (1) Upon receipt of the statement referred to in 76-16-315, the sheriff or constable shall proceed to advertise and sell at public auction the livestock so taken up.

(2) Such livestock shall be sold on 5 days' notice posted at the courthouse of each county in which any portion of the district lies and posted in three public places in such county, one of which shall be within the district. Such sheriff may require from the state district a good and sufficient bond, conditioned that the state district has used reasonable diligence to discover the owner of such stock and to notify him in the premises and that all requirements of law on the part of the state district to be performed in the premises have been performed and indemnifying the sheriff against all liability for the sale of said livestock except as to his own failure to perform the things required of him by law.

History: En. Sec. 26, Ch. 208, L. 1939; amd. Sec. 7, Ch. 199, L. 1945; amd. Sec. 4, Ch. 257, L. 1955; R.C.M. 1947, 46-2326(part).

76-16-317. Disposition of sale proceeds. (1) The proceeds of the sale shall be applied by the sheriff, after first deducting his costs and expenses, to the discharge of the claims and the costs of the proceedings in selling the property and to the payment of the damages, claims, and costs of the party taking up such livestock, and the remainder, if any, may be paid over to the owner of such livestock, if known, and if the owner is not known, then such remainder shall be deposited with the county treasurer, who shall keep the same in a public fund to be designated state grazing district fund (giving the name of the district). A separate fund, styled as above, shall be kept by the county treasurer for each of said districts within his county. The county treasurer shall make a record of the number and type of animals sold and the brands on same, if any, the amount received for same, and the amount of deductions. The record shall be open to public inspection.

(2) Any person making claim of ownership of such livestock to the board of county commissioners at any time within 1 year from date of sale and submitting proof of ownership to such board with such claim to the satisfaction of such board shall be entitled to receive such excess received from the sale of such livestock.

(3) Any money received from the sale of any such livestock which shall not be so claimed within 1 year after such sale shall be transferred to the general fund of the county at the expiration of said period.

History: En. Sec. 26, Ch. 208, L. 1939; amd. Sec. 7, Ch. 199, L. 1945; amd. Sec. 4, Ch. 257, L. 1955; R.C.M. 1947, 46-2326(7).

76-16-318. Unlawful recovery of trespassing livestock. Any person taking or rescuing from the possession of a state grazing district or an agent thereof any animal taken up and impounded pursuant to 76-16-310 through 76-16-317 shall be guilty of a misdemeanor and upon conviction thereof shall be punishable by a fine not exceeding $200.

History: En. Sec. 26, Ch. 208, L. 1939; amd. Sec. 7, Ch. 199, L. 1945; amd. Sec. 4, Ch. 257, L. 1955; R.C.M. 1947, 46-2326(10).

76-16-319. No liability for official acts. No officer, board, or employee of such officer or board or employee of any county or of any state district shall be liable for any act performed in good faith in discharging official duties under this chapter. All such acts shall be presumed to have been in good faith and in conformity with this chapter.

History: En. Sec. 26, Ch. 208, L. 1939; amd. Sec. 7, Ch. 199, L. 1945; amd. Sec. 4, Ch. 257, L. 1955; R.C.M. 1947, 46-2326(8).

76-16-320. Maintenance of fences. (1) Regarding fences within the external boundaries of state districts, the cost of construction and maintenance of fence enclosing lands controlled by any member, nonmember, or state district within the external boundaries of such state district shall be borne by such member, nonmember, or state district, unless otherwise provided for in the duly approved bylaws of such state district.

(2) In the event of the adoption of provisions to the bylaws of a state district whereby the cost of construction and maintenance of fence is to be distributed proportionately among the parties affected by such cost of construction and maintenance of fence, the state district's proportionate share of such costs and maintenance shall be financed only by assessments levied by the state district against the permittee members of the district upon consent thereto by 55% of such permittee members.

History: En. Sec. 26, Ch. 208, L. 1939; amd. Sec. 7, Ch. 199, L. 1945; amd. Sec. 4, Ch. 257, L. 1955; R.C.M. 1947, 46-2326(11), (12).

76-16-321. Construction of trespass and fence provisions. (1) Sections 76-16-310 through 76-16-320 shall not be interpreted to repeal or abolish any other legal remedies which a member, a permittee, or a state district may now have against trespassing livestock or the owner or persons in control thereof. The remedies provided by 76-16-310 through 76-16-320 are additional and supplemental to the remedies provided by any other laws of the state of Montana.

(2) Nothing contained in 76-16-310 through 76-16-320 shall be so construed as to restrict the right of parties to obtain injunctive relief from a court of competent jurisdiction.

History: (1)En. Sec. 8, Ch. 199, L. 1945; Sec. 46-2327, R.C.M. 1947; (2)En. Sec. 26, Ch. 208, L. 1939; amd. Sec. 7, Ch. 199, L. 1945; amd. Sec. 4, Ch. 257, L. 1955; Sec. 46-2326, R.C.M. 1947; R.C.M. 1947, 46-2326(13), 46-2327.

76-16-322. Fence-out requirement. Farming lands lying within the external boundaries of a state district shall be protected by the owner or lessee to the extent of a legal fence as described in 81-4-101(1). The state district or its members shall not be liable for damages unless such farming lands are protected by a sufficient fence as described in this section.

History: En. Sec. 27, Ch. 208, L. 1939; R.C.M. 1947, 46-2329(part).

76-16-323. District finances. A state district may:

(1) fix and determine the amount of grazing fees to be imposed on members or nonmembers for the purpose of paying leases and operating expenses and fix and determine the amount of assessments to be made on members on an animal unit basis for the purpose of acquiring lands by purchase or for the purpose of constructing improvements in the state district;

(2) set up and maintain a reasonable reserve fund;

(3) borrow money and if necessary mortgage the physical assets of a state district to provide for operation and development, provided that at least 80% of the permittee members of the state district consent in writing to the borrowing and the borrowing has been approved by the department. This subsection does not confer power upon a state district to mortgage the property of the individual members of the district.

History: En. Sec. 12, Ch. 208, L. 1939; amd. Sec. 42, Ch. 253, L. 1974; amd. Sec. 1, Ch. 22, L. 1977; R.C.M. 1947, 46-2312(6), (9), (10).

76-16-324. Lawsuits involving district. A state district may sue or be sued in its corporate name.

History: En. Sec. 12, Ch. 208, L. 1939; amd. Sec. 42, Ch. 253, L. 1974; amd. Sec. 1, Ch. 22, L. 1977; R.C.M. 1947, 46-2312(2).

76-16-325. Compliance with department orders required. (1) If a state district or the directors of a state district fail to comply with an order of the department, the board may order a hearing thereon within the district or county and cite the directors of the district to appear before the board.

(2) If upon the hearing it appears that the directors refuse to perform the duties of their office as herein defined and as set forth in the articles of incorporation and the bylaws of the association or refuse to comply with a lawful order of the department, the directors may be summarily removed by the board from office, and thereupon the district shall elect new officers. During the period until the election, the department may operate and manage the affairs of the state district.

(3) The expense of operating and managing the affairs of a noncomplying state district shall be paid by the noncomplying state district before it may be reinstated.

History: En. Sec. 7, Ch. 208, L. 1939; amd. Sec. 2, Ch. 199, L. 1945; amd. Sec. 37, Ch. 253, L. 1974; R.C.M. 1947, 46-2307(part).

Part 4

Grazing Permit System

76-16-401. Distribution of grazing preferences. When a state district is organized, grazing preferences shall be distributed in the following manner:

(1) Any member of a state district owning or controlling dependent commensurate property as heretofore defined may be given a grazing preference.

(2) If the carrying capacity of the range exceeds the reasonable needs of the members owning or controlling dependent commensurate property, members owning or controlling commensurate property shall have the preference.

(3) If the carrying capacity of the range exceeds the reasonable needs of the members owning or controlling dependent commensurate property or commensurate property, temporary grazing permits may be issued to nonmembers or members, preferring those that have used the range for any 3 years or any 2 consecutive years in the 5-year period immediately preceding June 28, 1934, or in the case of districts organized after March 15, 1945, preferring those that have used the range 5 years immediately preceding the organization of such districts.

History: En. Sec. 20, Ch. 208, L. 1939; amd. Sec. 5, Ch. 199, L. 1945; amd. Sec. 3, Ch. 163, L. 1953; amd. Sec. 3, Ch. 257, L. 1955; R.C.M. 1947, 46-2320(part).

76-16-402. Conversion of temporary permittee lands to dependent commensurate property. (1) When such temporary permit is utilized by a permittee in connection with forage-producing lands owned or controlled by such permittee within or near the district for a period of any combination of 4 years out of 5, then the forage-producing lands owned or controlled by such permittee may be considered dependent commensurate property and, upon application, the district may accordingly grant such permittee membership and preference in the district providing an application had been made for temporary rights for each of the 5 years.

(2) However, such temporary permits shall at all times be merely privileges granted from year to year, and their possession shall in no event establish a preference right unless such preference right be expressly granted by the district and in the manner herein provided.

History: En. Sec. 20, Ch. 208, L. 1939; amd. Sec. 5, Ch. 199, L. 1945; amd. Sec. 3, Ch. 163, L. 1953; amd. Sec. 3, Ch. 257, L. 1955; R.C.M. 1947, 46-2320(part).

76-16-403. Procedure if reduction in grazing privileges necessary. If reductions in grazing privileges become necessary, operators with temporary permits will be reduced first on a proportionate basis. When the extent of reduction of privileges exceeds that of temporary permits, then the rights of operators with both dependent commensurate property and commensurate property shall be reduced together on a proportionate basis.

History: En. Sec. 20, Ch. 208, L. 1939; amd. Sec. 5, Ch. 199, L. 1945; amd. Sec. 3, Ch. 163, L. 1953; amd. Sec. 3, Ch. 257, L. 1955; R.C.M. 1947, 46-2320(part).

76-16-404. Application for grazing preferences. Any person entitled to grazing preferences within any state grazing district based on dependent commensurate property or commensurate property must make application within 1 year after said district shall have been organized to qualify for said preference; provided, however, all permittees shall be entitled to benefits accruing under 76-16-401 through 76-16-403.

History: En. Sec. 21, Ch. 208, L. 1939; amd. Sec. 6, Ch. 199, L. 1945; R.C.M. 1947, 46-2321(part).

76-16-405. Grazing preferences appurtenant to dependent commensurate property and commensurate property. Grazing preferences run with and are appurtenant to the dependent commensurate and commensurate property upon which they are based except as provided in this chapter. They are not subject to devise, bequest, attachment, execution, lease, sale, exchange, transfer, pledge, mortgage, or other process or transaction, except as provided in this section, 76-16-406 through 76-16-409, 76-16-412, and 76-16-413 or in the bylaws of a state district.

History: Ap. p. Sec. 22, Ch. 208, L. 1939; amd. Sec. 4, Ch. 163, L. 1953; amd. Sec. 1, Ch. 24, L. 1971; amd. Sec. 49, Ch. 253, L. 1974; Sec. 46-2322, R.C.M. 1947; Ap. p. Sec. 2, Ch. 208, L. 1939; amd. Sec. 1, Ch. 199, L. 1945, amd. Sec. 37, Ch. 253, L. 1974; Sec. 46-2302, R.C.M. 1947; R.C.M. 1947, 46-2302(part), 46-2322(part).

76-16-406. Transfer of preferences. (1) Upon application by a permittee, the state district with the approval of the department may allow a preference based on ownership or control of dependent commensurate or commensurate property to be transferred to other property of sufficient commensurability; however, in any transfer of preference from dependent commensurate or commensurate property controlled but not owned by the applicant, the applicant must have had control and use of the dependent commensurate or commensurate property and the preference appurtenant thereto for 5 consecutive years and must have established and maintained the livestock operation upon which the dependency was established by use or priority immediately prior to the application for transfer.

(2) In addition, the transfer may not interfere with the stability of livestock operations or with proper range management and may not affect adversely the established local economy. A transfer may not be allowed without the written consent of the owner or owners of the dependent commensurate or commensurate property from which the transfer is to be made and the owner or owners of any encumbrances on the property. A transfer is not effective until approved by the department.

(3) All expenses involved under the application shall be borne by the applicant.

History: En. Sec. 22, Ch. 208, L. 1939; amd. Sec. 4, Ch. 163, L. 1953; amd. Sec. 1, Ch. 24, L. 1971; amd. Sec. 49, Ch. 253, L. 1974; R.C.M. 1947, 46-2322(part); amd. Sec. 24, Ch. 266, L. 1979.

76-16-407. Processing of application for transfer. (1) When an application for transfer is presented to the board of directors of a state district, the secretary upon the direction of that board shall give notice thereof, setting forth in general the application and the time and place of a hearing thereon as fixed by the board. A copy of the notice shall be given or mailed to the applicant and shall be published at least once a week for 2 successive weeks prior to the hearing in a newspaper published or generally circulated within the district, and the notice shall also be posted for at least 2 full weeks prior to the hearing in three public places within the district.

(2) The date of hearing must be at least 15 days from the first publication of the notice. At the hearing the directors shall fully hear and determine the application and any objections thereto.

History: En. Sec. 22, Ch. 208, L. 1939; amd. Sec. 4, Ch. 163, L. 1953; amd. Sec. 1, Ch. 24, L. 1971; amd. Sec. 49, Ch. 253, L. 1974; R.C.M. 1947, 46-2322(2).

76-16-408. Effect of transfer of preference. Upon the allowance of a transfer under 76-16-405 through 76-16-407, the property from which the transfer is made loses its grazing preference to the extent of the preference transferred.

History: En. Sec. 22, Ch. 208, L. 1939; amd. Sec. 4, Ch. 163, L. 1953; amd. Sec. 1, Ch. 24, L. 1971; amd. Sec. 49, Ch. 253, L. 1974; R.C.M. 1947, 46-2322(3).

76-16-409. Transfer of underlying property. (1) When the land to which a preference is attached changes its control or ownership, the preference changes with the land and the person to which the control or ownership changes shall secure a nonuse permit or shall pay the usual grazing fees.

(2) If the person fails to secure a nonuse permit or refuses to pay the grazing fees, the preferences may be revoked by the state district.

History: En. Sec. 22, Ch. 208, L. 1939; amd. Sec. 4, Ch. 163, L. 1953; amd. Sec. 1, Ch. 24, L. 1971; amd. Sec. 49, Ch. 253, L. 1974; R.C.M. 1947, 46-2322(part).

76-16-410. Compensation to district for range improvements. Subsequent lessees or owners of land shall compensate a state district for the value of range improvements constructed with the consent of the owner upon lands leased by the state district. The value shall be the value at the expiration date of the lease. If the owner and the state district cannot agree as to the value, the state district may either remove or abandon the improvement. If the subsequent lessee and the state district cannot agree as to the value, it shall be fixed by the department.

History: En. Sec. 23, Ch. 208, L. 1939; amd. Sec. 50, Ch. 253, L. 1974; R.C.M. 1947, 46-2323.

76-16-411. Grazing permits to owners of land not controlled by district. (1) When any land is situated within the boundaries of a state district and is not leased or controlled by said district and not surrounded by a legal fence, any person owning or controlling such lands shall have the right to obtain a grazing permit from the state district, the size of which shall be determined by the carrying capacity of such land, full consideration being given for location of necessary stock water. The use of such permit shall be subject to all regulations by the state district.

(2) If the person owning or controlling such land declines to secure such permit or fails to lease such land to the state district at a fair lease rental and fails to fence such land at his own expense, he shall not be entitled to recover damages for trespass by stock grazing under permit, but the state district shall not issue a permit to use the carrying capacity of such land.

History: En. Sec. 27, Ch. 208, L. 1939; R.C.M. 1947, 46-2329(part).

76-16-412. Revocation of preferences upon failure to obtain permits, pay fees, or obey rules. (1) If a person controls but does not own land and does not secure a nonuse permit and refuses to pay grazing fees, the state district shall notify the owner of the land by registered or certified mail that the preference attached to the land will be revoked unless the owner pays the usual grazing fees to the state district within 60 days from the time of receipt of the notice. The state district may revoke the preference if the owner or mortgagor does not pay the fees or secure a nonuse permit.

(2) If a permittee fails to pay grazing fees or assessments levied by the state district or fails to obtain a nonuse permit or violates any of the rules of the state district, the state district may notify the permittee and owner

of the land by registered or certified mail that the preference attached to the land will be revoked unless the grazing fees or assessments are paid or the permittee ceases to violate the rules laid down by the district within 60 days from the time of receipt of the notice. The state district may revoke the preference if the permittee or owner fails to pay the charges or comply.

History: En. Sec. 22, Ch. 208, L. 1939; amd. Sec. 4, Ch. 163, L. 1953; amd. Sec. 1, Ch. 24, L. 1971; amd. Sec. 49, Ch. 253, L. 1974; R.C.M. 1947, 46-2322(part).

76-16-413. Effect of revocation. (1) When a preference is revoked, it is detached from the dependent commensurate or commensurate property to which it was formerly appurtenant and it immediately shifts to the state district.

(2) The state district may then allocate it to either dependent commensurate or commensurate property in the manner provided by its bylaws.

History: En. Sec. 22, Ch. 208, L. 1939; amd. Sec. 4, Ch. 163, L. 1953; amd. Sec. 1, Ch. 24, L. 1971; amd. Sec. 49, Ch. 253, L. 1974; R.C.M. 1947, 46-2322(7).

76-16-414. Equalization of district assets. (1) Whenever a state district shall possess reserves, the values of which are greater than its liabilities, and the state district shall determine that a part of such reserves is in excess of its reasonable needs to operate the district, such state district may refund to the permittee members their proportionate share of such reserves as determined at the last annual accounting.

(2) Whenever a state district shall possess reserves and physical assets, the values of which are greater than its liabilities, and a permittee member shall lose his grazing preference, he shall be entitled to receive his proportionate share of the value of such excess from the state district, as determined by the annual accounting of the state district. The state district may set off the amount of any claim it may have against such former member.

(3) Whenever a new member shall receive a grazing preference, he shall, as a condition of receiving such preference, pay to the state district the value of the equitable interest in the physical assets and reserve fund which accrues to him by virtue of such membership. Such value shall be determined at the time of receiving such preference and upon the basis of the determination of value of such physical assets and reserves made at the last annual accounting.

History: En. Sec. 24, Ch. 208, L. 1939; amd. Sec. 5, Ch. 163, L. 1953; R.C.M. 1947, 46-2324.

76-16-415. Application to trespass actions. Sections 76-16-405 through 76-16-409, 76-16-412, and 76-16-413 do not apply to trespass violations.

History: En. Sec. 22, Ch. 208, L. 1939; amd. Sec. 4, Ch. 163, L. 1953; amd. Sec. 1, Ch. 24, L. 1971; amd. Sec. 49, Ch. 253, L. 1974; R.C.M. 1947, 46-2322(part).

TITLE 77

STATE LANDS

Ch.
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3. Rock, Mineral, Coal, Oil, and Gas Resources.
4. Geothermal and Hydroelectric Resources.
5. Timber Resources.
6. Agricultural, Grazing, and Other Surface Leases.

CHAPTER 1

ADMINISTRATION OF STATE LANDS

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Part 1

General Provisions

77-1-101. Definitions. Unless the context requires otherwise, in this title the following definitions apply:

(1) "Department" means the department of state lands provided for in Title 2, chapter 15, part 32.

(2) "Board" means the board of land commissioners provided for in Article X, section 4, of the constitution of this state.

(3) "Commissioner" means the commissioner of state lands provided for in 2-15-3202.

(4) "State land" or "lands" means lands granted to the state by the United States for any purpose, either directly or through exchange for other lands; lands deeded or devised to the state from any person; and lands that are the property of the state through the operation of law. The term does not include lands the state conveys through the issuance of patent; lands used for building sites, campus grounds, or experimental purposes by any state institution that are the property of that institution; or lands acquired through foreclosure of any investments purchased under the provisions of 17-6-211.

History: En. Sec. 2, Ch. 60, L. 1927; re-en. Sec. 1805.2, R.C.M. 1935; amd. Sec. 7, Ch. 184, L. 1961; amd. Sec. 2, Ch. 428, L. 1973; amd. Sec. 2, Ch. 203, L. 1977; R.C.M. 1947, 81-102.

77-1-102. Ownership of certain islands and abandoned riverbeds. All lands lying and being in and forming a part of the abandoned bed of any navigable stream or lake in this state and lying between the meandered lines of such stream or lake as the same are shown by the United States survey thereof and all islands existing in the navigable streams or lakes in this state which have not been surveyed by the government of the United States and all lands which at any time in the past comprised such an island or any part thereof, except such lands as are occupied by and belong to the adjacent landowners as accretions, belong to the state of Montana to be held in trust for the benefit of the public schools of the state.

History: En. Sec. 1, Ch. 36, L. 1937; R.C.M. 1947, 81-2301.

77-1-103. Administration of lands. The board shall lease or sell lands under 77-1-102 in the same manner as other school lands of the state are leased and sold. The board may sell or lease these lands without having them surveyed, unless the board considers it to be to the best interests of the state to have the lands surveyed as in 77-1-104. The proceeds from the leasing and sale of such lands shall be disposed of in the same manner as disposition is made of the proceeds from the leasing and sale of school lands of the state.

History: En. Sec. 2, Ch. 36, L. 1937; amd. Sec. 104, Ch. 428, L. 1973; R.C.M. 1947, 81-2302.

77-1-104. Survey of lands. If the board considers it necessary that any of the lands mentioned in 77-1-102 be surveyed, it shall have the lands surveyed by the county surveyor of the county in which the lands are located. If there is no county surveyor, if the county surveyor is unable to make the survey, or if the best interests of the state require, the board shall appoint a qualified surveyor to make the surveys. The county surveyor or other surveyor appointed shall make an actual survey thereof establishing four corners of every quarter section and connecting the same with a United States survey and within 30 days after such survey file with the county clerk and recorder of that county a copy under oath of his field notes and plat and a duly certified copy of his field notes and plat with the department. For the services required in connection with the survey, the county surveyor or other surveyor appointed is entitled to fees as prescribed in 7-4-2821. Such fees shall be paid in the same manner as other expenses of the department.

History: En. Sec. 3, Ch. 36, L. 1937; amd. Sec. 105, Ch. 428, L. 1973; R.C.M. 1947, 81-2303.

77-1-105. Determining title. The board may take all proper proceedings for the purpose of determining the title to the beds of lakes and other bodies of water and of streams within the state and to that end may bring or defend suits or other proceedings in court or before other proper tribunals.

History: En. Sec. 14, Ch. 148, L. 1937; Sec. 81-614, R.C.M. 1947; redes. 81-2305 and amd. by Sec. 46, Ch. 428, L. 1973; R.C.M. 1947, 81-2305.

77-1-106 through 77-1-110 reserved.

77-1-111. Court actions. (1) All actions for the recovery of money due under this title or for the cancellation of leases or for the cancellation of certificates of purchase or patents or for the recovery of state lands, actions of forcible entry and detainer, actions for ejectment, and all other actions affecting any state lands shall be controlled, as to venue, by the provisions of the rules of civil procedure relating to the place of trial of civil actions and shall be conducted by the attorney general.

(2) When so requested by the attorney general, the county attorney of each county in the state shall represent the state in all foreclosure proceedings, collections of delinquent rentals, actions for trespass on state lands, and in all other state land matters that may arise in his county. The county attorney shall not be entitled to charge the state any compensation for such services beyond his regular salary.

History: (1)En. Sec. 100, Ch. 147, L. 1909; re-en. Sec. 1921, R.C.M. 1921; re-en. Sec. 1921, R.C.M. 1935; Sec. 79-1503, R.C.M. 1947; (2)En. Sec. 112, Ch. 60, L. 1927; re-en. Sec. 1805.112, R.C.M. 1935; Sec. 81-1015, R.C.M. 1947; R.C.M. 1947, 79-1503, 81-1015.

77-1-112. Violations classified. (1) Any officer, employee, or representative of the state who directly or indirectly accepts any money or any other valuable thing, except his regular and lawful compensation, for performing or not performing an official act under the provisions of this title or for modifying the performance thereof is guilty of a felony and punishable as provided in 77-1-115.

(2) Any officer, employee, or representative of the state who knowingly and willfully makes any false classification or appraisal of any state land or of any land offered the state for sale or offered as security for a loan from the state or who falsely classifies or scales any timber on state lands or from state lands or any timber in which the state is interested or who knowingly and willfully makes any false report of any such classification or appraisal or scaling is guilty of a felony and punishable as provided in 77-1-115.

(3) (a) Any officer, employee, or representative of the state who otherwise violates any of the provisions of this title:

(i) is guilty of a felony if the violation results in a loss to the state of $1,000 or more; or

(ii) is guilty of a misdemeanor if the violation results in a loss to the state of less than $1,000 or in no pecuniary loss.

(b) The punishment shall be as provided in 77-1-115.

History: (1), (2)En. Sec. 118, Ch. 60, L. 1927; re-en. Sec. 1805.118, R.C.M. 1935; Sec. 81-1111, R.C.M. 1947; (3)En. Sec. 106, Ch. 147, L. 1909; re-en. Sec. 1927, R.C.M. 1921; re-en. Sec. 1927, R.C.M. 1935; Sec. 79-1504, R.C.M. 1947; R.C.M. 1947, 79-1504, 81-1111; amd. Sec. 1, Ch. 15, L. 1979.

77-1-113. Restrictions on who may buy or lease state lands. It is unlawful for any member of the board, any person appraising lands or in the employ of the state for the selection, classification, appraisal, sale, or leasing of any state lands or the timber thereon, or any person connected with the department of state lands as an officer or employee to purchase or lease, directly or indirectly, any of the land of the state or any timber thereon.

History: En. Sec. 117, Ch. 60, L. 1927; re-en. Sec. 1805.117, R.C.M. 1935; amd. Sec. 75, Ch. 428, L. 1973; R.C.M. 1947, 81-1110; amd. Sec. 2, Ch. 15, L. 1979.

77-1-114. Prosecutions. (1) Whenever an arrest shall be made for any violation of the provisions of this title or whenever any information of such violations shall be lodged with him, the county attorney of the county in which this act was committed must prosecute the offender or offenders if in his judgment the facts warrant the same.

(2) If any county attorney shall fail to comply with the provisions of this section, he shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than $100 or more than $1,000. Upon his conviction, the district court wherein he is convicted shall forthwith declare his office vacant and notify the proper appointing power thereof. Actions against the county attorney shall be brought by the attorney general in the name of the state.

(3) The penalties of this section shall also apply to any magistrate with proper authority who refuses or neglects to cause the arrest and prosecution of any person when a complaint under oath of a violation of any of the provisions of this title has been lodged with him.

History: En. Sec. 17, Ch. 147, L. 1909; re-en. Sec. 1839, R.C.M. 1921; re-en. Sec. 1839, R.C.M. 1935; R.C.M. 1947, 81-1416; amd. Sec. 3, Ch. 15, L. 1979.

77-1-115. Punishments. (1) Any officer, employee, or representative of the state who is found guilty of a felony as defined in 77-1-112 is punishable by imprisonment in the state penitentiary for not less than 1 or more than 10 years or by a fine which shall neither be less than $500 nor less than twice the amount of the loss that resulted to the state through the crime of which he has been convicted or by both such imprisonment and fine.

(2) Any officer, employee, or representative of the state who is found guilty of a misdemeanor as defined in 77-1-112 is punishable by imprisonment in a county jail not to exceed 1 year or by a fine which shall neither be less than $100 nor less than twice the amount of the loss that resulted to the state through the crime of which he has been convicted or by both such imprisonment and fine.

History: En. Sec. 119, Ch. 60, L. 1927; re-en. Sec. 1805.119, R.C.M. 1935; R.C.M. 1947, 81-1112; amd. Sec. 4, Ch. 15, L. 1979.

77-1-116. Additional penalty. In addition to the penalties provided for in this code against those committing trespass upon any of the lands owned or held in trust or otherwise by the state, the board is hereby authorized and empowered, without legal process, to seize and take or cause to be seized and taken any and all lumber, wood, grass, or other property unlawfully severed from the lands, whether the same has been removed from said lands or not, and may dispose of the same at either public or private sale in such manner as will be most conducive to the interests of the state, and all moneys arising therefrom, after deducting the reasonable and necessary expenses of such seizure and sale, shall be a part of the permanent fund to which such lands may belong.

History: En. Sec. 7, p. 49, L. 1893; re-en. Sec. 3566, Pol. C. 1895; re-en. Sec. 2219, Rev. C. 1907; amd. Sec. 59, Ch. 147, L. 1909; re-en. Sec. 1879, R.C.M. 1921; re-en. Sec. 1879, R.C.M. 1935; R.C.M. 1947, 81-1602.

77-1-117. Disposition of fines. Unless otherwise provided, all money received as fines, fees, and forfeitures under this title or as penalties for the violation of any of the land laws of this state shall be paid to the state treasurer and by him deposited to the credit of the general fund.

History: En. Sec. 104, Ch. 147, L. 1909; amd. Sec. 1, Ch. 99, L. 1917; amd. Sec. 1, Ch. 171, L. 1919; amd. Sec. 1, Ch. 103, L. 1921; re-en. Sec. 1919, R.C.M. 1921; re-en. Sec. 1919, R.C.M. 1935; R.C.M. 1947, 79-1502; amd. Sec. 5, Ch. 15, L. 1979.

Part 2

Board of Land Commissioners

77-1-201. Board — meetings and officers. (1) The board shall hold regular meetings at least once each month and may hold special meetings whenever considered necessary upon call of the president or a majority of the members.

(2) Three members of the board constitute a quorum for the transaction of business. The governor is the president of the board; in his absence the lieutenant governor shall preside and in his absence the superintendent of public instruction shall preside.

History: En. Sec. 4, Ch. 60, L. 1927; re-en. Sec. 1805.4, R.C.M. 1935; amd. Sec. 4, Ch. 428, L. 1973; R.C.M. 1947, 81-104.

77-1-202. Powers and duties of board. The board shall exercise general authority, direction, and control over the care, management, and disposition of state lands and, subject to the investment authority of the board of investments, the funds arising from the leasing, use, sale, and disposition of those lands or otherwise coming under its administration. In the exercise of these powers, the guiding rule and principle is that these lands and funds are held in trust for the support of education and for the attainment of other worthy objects helpful to the well-being of the people of this state. The board shall administer this trust to secure the largest measure of legitimate and reasonable advantage to the state.

History: En. Sec. 3, Ch. 60, L. 1927; re-en. Sec. 1805.3, R.C.M. 1935; amd. Sec. 1, Ch. 113, L. 1969; amd. Sec. 1, Ch. 67, L. 1973; amd. Sec. 3, Ch. 428, L. 1973; R.C.M. 1947, 81-103(part).

77-1-203. Multiple-use management. (1) The board shall manage state lands under the multiple-use management concept defined as the management of all the various resources of the state lands so that:

(a) they are utilized in that combination best meeting the needs of the people and the beneficiaries of the trust, making the most judicious use of the land for some or all of those resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions and realizing that some land may be used for less than all of the resources; and

(b) harmonious and coordinated management of the various resources, each with the other, will result without impairment of the productivity of the land, with consideration being given to the relative values of the various resources.

(2) If a parcel of state land in one class has other multiple uses or resource values which are of such significance that they do not warrant classification for the value, the land shall, nevertheless, be managed insofar as is possible to maintain or enhance these multiple-use values.

History: (1)En. Sec. 3, Ch. 60, L. 1927; re-en. Sec. 1805.3, R.C.M. 1935; amd. Sec. 1, Ch. 113, L. 1969; amd. Sec. 1, Ch. 67, L. 1973; amd. Sec. 3, Ch. 428, L. 1973; Sec. 81-103, R.C.M. 1947; (2)En. Sec. 16, Ch. 60, L. 1927; amd. Sec. 8, Ch. 428, L. 1973; amd. Sec. 1, Ch. 8, L. 1974; Sec. 81-302, R.C.M. 1947; R.C.M. 1947, 81-103(part), 81-302(part); amd. Sec. 6, Ch. 15, L. 1979.

77-1-204. Power to sell, lease, or exchange certain state lands. (1) The board is authorized to lease state lands for uses other than agriculture, grazing, timber harvest, or mineral production under such terms and conditions which best meet the duties of the board as specified in 77-1-202 and 77-1-203(1). The lease period for such leases, except for power and school site leases, may not be for longer than 25 years.

(2) The board shall have full power and authority to sell, exchange or lease lands under its jurisdiction by virtue of 77-1-214 when, in its judgment, it is advantageous to the state to do so in the highest orderly development and management of state forests and state parks. Said sale, lease, or exchange shall not be contrary to the terms of any contract which it has entered into.

History: (1)En. 81-103.1 by Sec. 1, Ch. 135, L. 1974; Sec. 81-103.1, R.C.M. 1947; (2)En. Sec. 5, Ch. 159, L. 1937; Sec. 81-1107, R.C.M. 1947; R.C.M. 1947, 81-103.1, 81-1107.

77-1-205. Board to correct errors. The board shall correct errors, mistakes, and misdescriptions in deeds and conveyances of property to the state. Deeds or other conveyances shall be made and executed in the manner provided for the execution of patents by the state. The board may also correct errors in leases, certificates of purchase, patents, and other conveyances of property from the state upon satisfactory proof that an error or mistake has been made.

History: En. Sec. 115, Ch. 60, L. 1927; re-en. Sec. 1805.115, R.C.M. 1935; Sec. 81-1108, R.C.M. 1947; redes. 81-106 and amd. by Sec. 73, Ch. 428, L. 1973; R.C.M. 1947, 81-106.

77-1-206. Board to prescribe further rules for appraisal. The board shall prescribe such further rules for the appraisal of state lands as it may deem necessary, not inconsistent with the provisions of this title or the state constitution.

History: En. Sec. 18, Ch. 60, L. 1927; re-en. Sec. 1805.18, R.C.M. 1935; R.C.M. 1947, 81-303.

77-1-207. Board to defend suits. For the purpose of determining the title to any property seized and taken under the provisions of 77-1-116, the board is hereby authorized and empowered to defend, in the name of the state, any and all actions that may be brought for that purpose and to do and perform all things necessary to protect the interests of the state.

History: En. Sec. 8, p. 49, L. 1893; re-en. Sec. 3567, Pol. C. 1895; re-en. Sec. 2220, Rev. C. 1907; re-en. Sec. 60, Ch. 147, L. 1909; re-en. Sec. 1880, R.C.M. 1921; re-en. Sec. 1880, R.C.M. 1935; R.C.M. 1947, 81-1603.

77-1-208 through 77-1-210 reserved.

77-1-211. Acceptance of federal land grants. (1) The board may accept any grant of lands from the United States to the state made in carrying out the provisions of The Enabling Act and also any other grant for any special purpose that may be made by the United States to the state, except as provided in subsection (2).

(2) Legislative approval is required for any acceptance of land by the state of Montana from the United States if the land was acquired by the United States through condemnation procedures.

History: En. Sec. 113, Ch. 60, L. 1927; re-en. Sec. 1805.113, R.C.M. 1935; amd. Sec. 70, Ch. 428, L. 1973; R.C.M. 1947, 81-1101(part); amd. Sec. 1, Ch. 452, L. 1979.

77-1-212. Acceptance of federal facilities and installations — title in state. The board may, on behalf of the state, accept donations of federal installations, facilities, lands, or properties. All title to the installations or facilities shall be vested in the name of the state for its use. This section does not limit, reduce, or supersede Title 18, chapter 5, part 2.

History: **En. Sec. 1, Ch. 252, L. 1965; amd. Sec. 71, Ch. 428, L. 1973; R.C.M. 1947, 81-1101.1.**

77-1-213. Acceptance of gifts, donations, grants, legacies, and devises to the state. (1) The board is hereby authorized and empowered to accept on behalf of the state from any natural person gifts, donations, grants, legacies, and devises having a value of not less than $250 from each person. All lands passing to the state under these provisions or through the operation of law shall be managed as other state lands, and the rents and earnings shall be applied in accordance with the object and purpose specified by the grantor, subject to all constitutional limitations.

(2) All money realized from the sale of such lands and from other property and all gifts, donations, grants, legacies, and devises made in money or the equivalent of money shall be administered by the board for the benefit of the specific purposes designated by the person from whom they were received and as further regulated by this title. The provisions of this section shall apply to gifts, donations, grants, legacies, and devises already made to the state and now under the administration of the board if not contrary to any specific provisions made therein by the persons from whom they were received.

History: **En. Sec. 114, Ch. 60, L. 1927; re-en. Sec. 1805.114, R.C.M. 1935; amd. Sec. 43, Ch. 100, L. 1973; R.C.M. 1947, 81-1102.**

77-1-214. Donations of land for forestry purposes. The board may accept gifts, donations, or contributions of land suitable for forestry or park purposes and enter into agreements with the federal government or other agencies for acquiring by lease, purchase, or otherwise such lands as in the judgment of the board are desirable for state forests.

History: **En. Sec. 1, Ch. 159, L. 1937; amd. Sec. 72, Ch. 428, L. 1973; R.C.M. 1947, 81-1103.**

77-1-215. Expenditures authorized. When lands are acquired or leased under 77-1-214, the board is hereby authorized to:

(1) make expenditures from any funds not otherwise obligated for the management, development, and utilization of such areas;

(2) sell or otherwise dispose of products from such lands; and

(3) make such rules as may be necessary to carry out the purposes of 77-1-214 through 77-1-217 and 77-1-204(2).

History: **En. Sec. 2, Ch. 159, L. 1937; R.C.M. 1947, 81-1104.**

77-1-216. Disposition of revenues and profits. All revenues derived from lands acquired under the provisions of 77-1-214 shall be segregated by the state treasurer for the use of the board in the acquisition, management, development, and use of such lands until all obligations incurred have been paid in full. Thereafter, 50% of all net profits accruing from the administration of such lands shall be applicable for such purposes as the legislature may prescribe and 50% shall be paid into the school fund of the county in which lands are located.

History: **En. Sec. 3, Ch. 159, L. 1937; R.C.M. 1947, 81-1105.**

77-1-217. Payment of certain obligations. Obligations for the acquisition of land incurred by the board under the authority of 77-1-214 shall be paid solely and exclusively from revenues derived from such lands and shall not impose any liability upon the general credit and taxing power of the state.

History: En. Sec. 4, Ch. 159, L. 1937; R.C.M. 1947, 81-1106.

Part 3

Department of State Lands

77-1-301. Powers and duties of the department. (1) Under the direction of the board, the department has charge of the selecting, exchange, classification, appraisal, leasing, management, sale, or other disposition of the state lands. It shall perform such other duties the board directs, the purpose of the department demands, or the statutes require.

(2) It shall collect and receive all moneys payable to the state through its office as fees, rentals, royalties, interest, penalties, or payments on mortgages or lands purchased from the state or derived from any other source. It shall issue a receipt for each cash payment or whenever requested by the payer.

History: En. Sec. 8, Ch. 60, L. 1927; re-en. Sec. 1805.8, R.C.M. 1935; amd. Sec. 2, Ch. 26, L. 1971; Sec. 81-204, R.C.M. 1947; redes. 81-105 and amd. by Sec. 5, Ch. 428, L. 1973; R.C.M. 1947, 81-105.

77-1-302. Setting fees. The department may prescribe fees, with the approval of the board, for the issuance, filing, or making of a copy of any instrument or for any other service.

History: En. Sec. 120, Ch. 60, L. 1927; re-en. Sec. 1805.120, R.C.M. 1935; amd. Sec. 19, Ch. 121, L. 1965; amd. Sec. 11, Ch. 22, L. 1971; Sec. 81-1113, R.C.M. 1947; redes. 81-108 and amd. by Sec. 76, Ch. 428, L. 1973; R.C.M. 1947, 81-108.

77-1-303. Refunding of money paid by mistake. If any money is erroneously paid to the state on any permit, lease, certificate of purchase, patent, loan, or in any other transaction, the department shall refund that money to the person entitled to it from the proper fund.

History: En. Sec. 116, Ch. 60, L. 1927; re-en. Sec. 1805.116, R.C.M. 1935; Sec. 81-1109, R.C.M. 1947; redes. 81-107 and amd. by Sec. 74, Ch. 428, L. 1973; R.C.M. 1947, 81-107.

77-1-304. Selection and location of lands granted by United States. Under the general direction of the board and as rapidly as the appropriations for the work will permit, the department shall select and locate all lands, except timberlands, granted to this state by the United States for any purpose and not located by the grant itself. It shall also select and locate lands in lieu of all those lands in sections 16 and 36 and in the other federal land grants which for any reason have been lost to the state. All selections shall as far as possible be in legal subdivisions. In the selection and location of these lands, careful attention shall be given to the water available and which may be appropriated for these lands for domestic use, livestock, and irrigation.

History: En. Sec. 15, Ch. 60, L. 1927; re-en. Sec. 1805.15, R.C.M. 1935; amd. Sec. 7, Ch. 428, L. 1973; R.C.M. 1947, 81-301.

Part 4

Classification of State Lands

77-1-401. Classes of land. The state lands are classified as follows:

(1) Class 1—lands which are principally valuable for grazing purposes;

(2) Class 2—lands which are principally valuable for the timber that is on them or for the growing of timber or for watershed protection;

(3) Class 3—lands which are principally valuable for the production of crops;

(4) Class 4—lands which are principally valuable for uses other than grazing, crop production, timber production, or watershed protection.

History: En. Sec. 16, Ch. 60, L. 1927; re-en. Sec. 1805.16, R.C.M. 1935; amd. Sec. 8, Ch. 428, L. 1973; amd. Sec. 1, Ch. 8, L. 1974; R.C.M. 1947, 81-302(1).

77-1-402. Basis for classification or reclassification. (1) The classification or reclassification shall be so made as to place state land in the class which best accomplishes the powers and duties of the board as specified in 77-1-202 and 77-1-203(1). When state lands are classified or reclassified in accordance with these duties and responsibilities, special attention shall be paid to the capability of the land to support an actual or proposed land use authorized by each classification.

(2) It is the duty of the department to classify or reclassify state lands so that no state land will be sold, leased, or used under a different classification from that to which it actually belongs.

History: En. Sec. 16, Ch. 60, L. 1927; re-en. Sec. 1805.16, R.C.M. 1935; amd. Sec. 8, Ch. 428, L. 1973; amd. Sec. 1, Ch. 8, L. 1974; R.C.M. 1947, 81-302(part).

77-1-403. Capability inventory. A capability inventory shall be made prior to changing the classification of state lands. Such inventory shall include, when appropriate to the classification, information on soils capability, vegetation, wildlife use, mineral characteristics, public use, aesthetic values, cultural values, surrounding land use, and any other resource, zoning, or planning information which is related to the classification.

History: En. Sec. 16, Ch. 60, L. 1927; re-en. Sec. 1805.16, R.C.M. 1935; amd. Sec. 8, Ch. 428, L. 1973; amd. Sec. 1, Ch. 8, L. 1974; R.C.M. 1947, 81-302(part).

77-1-404. Records of state lands. All field books, plats, maps, and records of the department shall show the class to which each tract therein belongs and whether it belongs to the public schools of the state or to a state institution or other entity according to the grant or instrument by which title to the land has passed to the state. They shall also show whether or not the coal or other minerals in the land are reserved by the United States and shall contain any other information the department considers necessary.

History: En. Sec. 16, Ch. 60, L. 1927; re-en. Sec. 1805.16, R.C.M. 1935; amd. Sec. 8, Ch. 428, L. 1973; amd. Sec. 1, Ch. 8, L. 1974; R.C.M. 1947, 81-302(4).

Part 5

State Land Equalization Payments

77-1-501. List of state lands by county. The department shall, before the first Monday of April of every year, prepare and transmit a statement to the department of revenue or its agent in each county in which the state has real property in excess of 6% of the total land area of the county and from which the state derives grazing, agricultural, or forest income. The statement shall contain the total number of acres owned by the state in that county and list the acres separately as grazing, agricultural, or forest land.

History: En. Sec. 1, Ch. 235, L. 1967; amd. Sec. 54, Ch. 391, L. 1973; amd. Sec. 77, Ch. 428, L. 1973; R.C.M. 1947, 81-1115.

77-1-502. Computation of state land equalization payment. (1) The department of revenue shall compute the amount of taxes which would be payable on the county assessments of said property as if it were owned by and taxable to a taxpayer of such county.

(2) If the land is not classified, the sum to be listed shall be determined by the average tax payment made on like property within the county where said land is situated, not to exceed 12 cents per grazing acre, 35 cents per agricultural acre, and 12 cents per forest acre. The average tax may be derived from the most recent biennial report of the department of revenue. The total figure arrived at by this method shall be called the gross assessment figure.

(3) The county exemption factor shall be determined by dividing the percentage the state-owned land bears to the total land area of the county into 6%. This quotient shall be multiplied by the gross assessment figure, and the product is called the state exemption figure.

(4) The state exemption figure shall be subtracted from the gross assessment to give the state land equalization payment.

History: En. Sec. 2, Ch. 235, L. 1967; amd. Sec. 55, Ch. 391, L. 1973; R.C.M. 1947, 81-1116.

77-1-503. Form to be completed by county agent of the department of revenue. The department shall provide a form to be followed and completed by the agent of the department of revenue in each county. The agent shall, before October 1, make the computations required and submit to the department the completed form which shall show the computations and method used in arriving at the state land equalization payment.

History: En. Sec. 3, Ch. 235, L. 1967; amd. Sec. 56, Ch. 391, L. 1973; amd. Sec. 78, Ch. 428, L. 1973; R.C.M. 1947, 81-1117.

77-1-504. Processing of county statements. The department shall examine the statement returned by the agent of the department of revenue for accuracy, and in no case shall the state land equalization payment be approved unless the state exemption figure is deducted from the gross assessment figure in the statement. The department shall, before November 1 of each year, prepare and file a claim with the department of administration for all counties who are eligible for state land equalization payments, and this claim shall show the amount of money each eligible county will receive.

History: En. Sec. 4, Ch. 235, L. 1967; amd. Sec. 57, Ch. 391, L. 1973; amd. Sec. 79, Ch. 428, L. 1973; R.C.M. 1947, 81-1118.

77-1-505. Warrant for payments to counties. The department of administration shall, before December 1, approve and authorize the issuance of a warrant on the general fund of the state made payable to the county treasurer of the counties shown on the claim for the payment of the state land equalization payment.

History: En. Sec. 5, Ch. 235, L. 1967; amd. Sec. 80, Ch. 428, L. 1973; R.C.M. 1947, 81-1119.

77-1-506. County distribution. The county treasurer shall distribute the money received under this part within his county as hereinafter provided:

(1) Sixty percent of total payment shall be broken down into cents per acre of total state-owned land within the county and apportioned between the elementary school districts in accordance with the amount of state-owned land in each elementary district.

(2) Forty percent shall be allotted to the county road fund.

History: **En. Sec. 6, Ch. 235, L. 1967; R.C.M. 1947, 81-1120.**

77-1-507. School district use of proceeds. The money received by any school district under this part shall be designated as district money for the general maintenance and operation of the elementary schools of the district. Such money may be used by the district as all other cash balances are used in accordance with the provisions of 20-9-335.

History: **En. Sec. 7, Ch. 235, L. 1967; amd. Sec. 81, Ch. 428, L. 1973; R.C.M. 1947, 81-1121.**

77-1-508. Repealed. Sec. 1, Ch. 214, L. 1979.

History: **En. Sec. 9, Ch. 60, L. 1927; re-en. Sec. 1805.9, R.C.M. 1935; Sec. 81-205, R.C.M. 1947; redes. 81-1122 and amd. by Sec. 6, Ch. 428, L. 1973; R.C.M. 1947, 81-1122.**

Part 6

Development of State Lands

77-1-601. Statement of policy. It is in the best interest and to the great advantage of the state of Montana to seek the highest development of state-owned lands in order that they might be placed to their highest and best use and thereby derive greater revenue for the support of the common schools, the university system, and other institutions benefiting therefrom, and that in so doing the economy of the local community as well as the state is benefited as a result of the impact of such development.

History: **En. Sec. 1, Ch. 295, L. 1967; R.C.M. 1947, 81-2401.**

77-1-602. Definition of terms. Unless the context requires otherwise, in this part the following definitions apply:

(1) "Account" means the resource development account in the earmarked revenue fund.

(2) "Income" means all proceeds received for the use of state land except revenues required by law to be placed in the Montana trust and legacy fund.

History: **En. Sec. 2, Ch. 295, L. 1967; amd. Sec. 106, Ch. 428, L. 1973; R.C.M. 1947, 81-2402.**

77-1-603. Rules. The board shall adopt such rules as it considers necessary and proper for the purpose of carrying out the provisions of this part.

History: **En. Sec. 8, Ch. 295, L. 1967; amd. Sec. 112, Ch. 428, L. 1973; R.C.M. 1947, 81-2408.**

77-1-604. Resource development account. A resource development account in the earmarked revenue fund in the state treasury is created to be used solely for the purpose of investing in the improvement and development of state lands acquired by grant or foreclosure in order to increase the revenue to be derived therefrom for common school support and support of the other entities, institutions, and objects for which the lands are held in trust. Appropriations from the account shall be expended for no other purposes.

History: En. Sec. 3, Ch. 295, L. 1967; amd. Sec. 107, Ch. 428, L. 1973; R.C.M. 1947, 81-2403(part).

77-1-605. Types of developments. The developments contemplated may include those projects that will develop or conserve the various state land resources, including water, both surface and underground, grazing land, agricultural land, and timber land to the benefit of the state. They may also include expenses necessary to perfect title to lands claimed by the state which are suitable for development and other expenses or costs which in the judgment of the board are desirable or necessary in order to develop or increase the value of the land or the revenue therefrom.

History: En. Sec. 3, Ch. 295, L. 1967; amd. Sec. 107, Ch. 428, L. 1973; R.C.M. 1947, 81-2403(part).

77-1-606. Restriction on use of income from school and institutional lands. Moneys in the account derived from the income from public school lands, university lands, agricultural college lands, scientific school lands, normal school lands, capitol building lands, or institutional lands shall be expended by the department solely for the purpose of defraying the costs and expenses necessarily incurred in developing public lands of the same trust. If the board determines that public lands in a trust may be developed and moneys in the account from that trust are insufficient to defray the necessary costs and expenses incurred, the board may transfer sufficient moneys from other trusts in the account. Trust accounts from which money is transferred shall be reimbursed by a method approved by the board.

History: En. Sec. 4, Ch. 295, L. 1967; amd. Sec. 1, Ch. 180, L. 1973; amd. Sec. 108, Ch. 428, L. 1973; R.C.M. 1947, 81-2404.

77-1-607. Deductions from income for development account — maximum percentage. The board shall determine the amount or percentage of income, not to exceed 2 ½%, which is necessary to achieve the purposes of this part and shall provide by rule for deductions of that amount or percentage from the income which is secured from the lands by the department for the trusts benefited by this part.

History: En. Sec. 5, Ch. 295, L. 1967; amd. Sec. 109, Ch. 428, L. 1973; R.C.M. 1947, 81-2405.

77-1-608. Crediting of deductions. All deductions from gross proceeds made in accordance with 77-1-607 shall be paid into the account, and the balance of the proceeds shall be paid into the state treasury to the credit of the proper account.

History: En. Sec. 6, Ch. 295, L. 1967; amd. Sec. 110, Ch. 428, L. 1973; R.C.M. 1947, 81-2406.

77-1-609. Investment of moneys in development account. The board of investments shall invest the moneys in the resource development account in safe interest-bearing securities for the benefit of the account.

History: En. Sec. 7, Ch. 295, L. 1967; amd. Sec. 111, Ch. 428, L. 1973; R.C.M. 1947, 81-2407.

CHAPTER 2

TRANSFERS AND RESERVATIONS OF PROPERTY INTERESTS

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Part 1

Easements

77-2-101. Easements for public uses. (1) The board may grant easements in state lands for schoolhouse sites and grounds, public parks, community buildings, cemeteries, and other public uses upon proper applications accompanied by accurate and duly verified plats from the lawfully constituted authorities having charge of those properties.

(2) The board may grant an easement for right-of-way across or upon any portion of state lands for any public highway or street, any ditch, reservoir, railroad, private road, telegraph or telephone line, or any other public use as defined in 70-30-102. This subsection shall not be construed to grant authority to convey any such land, except for the purposes above set forth.

History: (1)En. Sec. 57, Ch. 60, L. 1927; re-en. Sec. 1805.57, R.C.M. 1935; amd. Sec. 6, Ch. 257, L. 1965; amd. Sec. 53, Ch. 428, L. 1973; Sec. 81-802, R.C.M. 1947; (2)En. Sec. 62, Ch. 60, L. 1927; re-en. Sec. 1805.62, R.C.M. 1935; amd. Sec. 2, Ch. 108, L. 1939; Sec. 81-804, R.C.M. 1947; R.C.M. 1947, 81-802, 81-804(part).

77-2-102. Application for easement. (1) Application for an easement on state land must be made to the department. It shall describe the proposed right-of-way according to survey, show the necessity for the proposed highway or street or other easement, and give any additional information the department requires.

(2) This application shall be accompanied by two exact copies of the official plat of the proposed highway, street, or other easement, duly verified by the affidavit of the county surveyor or county or city engineer or other engineer having prepared the same endorsed thereon. These plats shall show the quantity of land taken by the proposed highway or street or other easement for each 40-acre tract or government lot of state land over or through which it passes and also the amount of land remaining in each portion of that 40-acre tract or government lot. When deemed necessary by the department, these plats shall show all these facts for such smaller subdivisions as the circumstances may render desirable for the state. However, when the purpose of the right-of-way applied for is the transmission or distribution of electric energy or the construction and operation of pipelines or telephone, telegraph,

or radio systems, the plats and measurements need not be given, except the description of the location of the center line of the right-of-way, and the entire right-of-way may be applied for in one application with only one plat of the entire right-of-way required.

History: **En. Sec. 61, Ch. 60, L. 1927; re-en. Sec. 1805.61, R.C.M. 1935; amd. Sec. 1, Ch. 108, L. 1939; amd. Sec. 1, Ch. 99, L. 1951; amd. Sec. 1, Ch. 203, L. 1953; amd. Sec. 1, Ch. 200, L. 1965; amd. Sec. 54, Ch. 428, L. 1973; R.C.M. 1947, 81-803(part).**

77-2-103. Processing of application. (1) Upon the filing of an application and plats, the department shall, whenever it considers it necessary, examine the proposed right-of-way and report its findings to the board. The board shall consider the application and report and take any action it considers proper, including the fixing of compensation and damages to be paid to the state. The compensation shall be the full market value of the estate or interest disposed of through the granting of the right-of-way easement, and the damages shall be the actual damages resulting to the remaining land as nearly as they can be ascertained. If the right-of-way is granted according to the plat, the plat shall become the official plat thereof and shall be retained in the office of the department. The board shall issue right-of-way deeds for all such easements that it grants upon full payment being made.

(2) If the state land over or through which a right-of-way is applied for is under certificate of purchase or sales contract, the purchaser or his assignee must be made a party to the proceedings and his consent in writing to the laying out and establishment of the proposed highway, street, or other easement and to the amount of compensation and damages to be paid must be filed with the board before the right-of-way is granted. The board is the judge of how much compensation and damages shall be paid to the state and applied on the certificate of purchase or sales contract and of how much, if any, shall be paid to the purchaser, as the circumstances in each individual case warrant. This subsection applies to all grants of rights-of-way on state lands.

History: **En. Sec. 61, Ch. 60, L. 1927; re-en. Sec. 1805.61, R.C.M. 1935; amd. Sec. 1, Ch. 108, L. 1939; amd. Sec. 1, Ch. 99, L. 1951; amd. Sec. 1, Ch. 203, L. 1953; amd. Sec. 1, Ch. 200, L. 1965; amd. Sec. 54, Ch. 428, L. 1973; R.C.M. 1947, 81-803(2), (3).**

77-2-104. Nature of easements. Easements granted under 77-2-102 and 77-2-103 include permission to install and maintain poles, anchors, and other appurtenances necessary for the mechanical support of the transmission or distribution lines.

History: **En. Sec. 61, Ch. 60, L. 1927; re-en. Sec. 1805.61, R.C.M. 1935; amd. Sec. 1, Ch. 108, L. 1939; amd. Sec. 1, Ch. 99, L. 1951; amd. Sec. 1, Ch. 203, L. 1953; amd. Sec. 1, Ch. 200, L. 1965; amd. Sec. 54, Ch. 428, L. 1973; R.C.M. 1947, 81-803(part).**

77-2-105. Termination of easements. Whenever lands granted for any of the purposes mentioned in 77-2-101(2) shall cease to be used for such purposes, said easement shall forthwith terminate upon notice to that effect to the person to whom such grant was made, served at his last known post-office address.

History: **En. Sec. 62, Ch. 60, L. 1927; re-en. Sec. 1805.62, R.C.M. 1935; amd. Sec. 2, Ch. 108, L. 1939; R.C.M. 1947, 81-804(part).**

77-2-106. Charge for granting of easement. The board shall charge and cause to be collected the full market value of the estate or interest disposed of through the granting of any such easement and also fix, charge, and cause to be collected the amount of the actual damages resulting to the remaining land or lands from the granting of such easement as nearly as the same can be ascertained. Where a road follows the section lines of state lands, the increased value accruing to said lands on account of construction of a road on said right-of-way easement shall be taken into consideration by the board in determining compensation, if any, for the easement.

History: En. Sec. 62, Ch. 60, L. 1927; re-en. Sec. 1805.62, R.C.M. 1935; amd. Sec. 2, Ch. 108, L. 1939; R.C.M. 1947, 81-804(part).

77-2-107. Involvement of lessee when land subject to prior lease. (1) Whenever any kind of right-of-way easement has been granted under this part and the state land in which it is granted is under lease, the party receiving such grant shall give due and timely notice to the lessee and shall make just settlement with him for any damages resulting to his improvements or crops or leasehold interests.

(2) Upon such settlement being made, the lessee shall open or move any fences that may obstruct the right-of-way over the lands under his lease and otherwise cooperate in the opening of the right-of-way. Proof shall be filed with the board that such settlement has been made before the deed to the easement is issued.

History: En. Sec. 63, Ch. 60, L. 1927; re-en. Sec. 1805.63, R.C.M. 1935; amd. Sec. 3, Ch. 108, L. 1939; R.C.M. 1947, 81-805.

77-2-108. Repealed. Sec. 4, Ch. 157, L. 1981.

History: En. Sec. 56, Ch. 60, L. 1927; amd. Secs. 1, 2, 3 and 4, Ch. 37, Ex. L. 1933; re-en. Sec. 1805.56, R.C.M. 1935; amd. Sec. 1, Ch. 80, L. 1945; amd. Sec. 52, Ch. 428, L. 1973; R.C.M. 1947, 81-801(2), (3).

Part 2

Exchanges of Land

77-2-201. Exchange of land with United States. (1) The board may enter into contracts or agreements with the United States or any department thereof having jurisdiction for the waiving and relinquishment to the United States of any rights of the state in and to sections 16 and 36 of any township and to any other parcel of state lands, provided that the state shall, in lieu of the rights so waived and relinquished, receive from the United States other lands of equal or greater value.

(2) The current user of the land transferred to the United States may continue to enjoy the use of the land under terms and conditions required by the federal government and in accordance with P.L. 88-607, as amended, (43 U.S.C. 1411 through 1418), and the current user of the land received from the United States may continue to utilize the land on the terms and conditions imposed by law or by the board.

History: En. Sec. 19, Ch. 60, L. 1927; amd. Sec. 1, Ch. 151, L. 1933; re-en. Sec. 1805.19, R.C.M. 1935; amd. Sec. 1, Ch. 117, L. 1951; amd. Sec. 1, Ch. 257, L. 1965; amd. Sec. 1, Ch. 39, L. 1967; amd. Sec. 9, Ch. 428, L. 1973; R.C.M. 1947, 81-304(1), (3); amd. Sec. 7, Ch. 15, L. 1979.

77-2-202. Exchange of land with counties. The board may accept on behalf of the state title in fee simple to any land owned by a county in the state and may convey in exchange therefor state land of approximately the same area and of a value not higher than the land received from the county if the exchange will result in consolidating the state lands into more compact bodies.

History: En. Sec. 19, Ch. 60, L. 1927; amd. Sec. 1, Ch. 151, L. 1933; re-en. Sec. 1805.19, R.C.M. 1935; amd. Sec. 1, Ch. 117, L. 1951; amd. Sec. 1, Ch. 257, L. 1965; amd. Sec. 1, Ch. 39, L. 1967; amd. Sec. 9, Ch. 428, L. 1973; R.C.M. 1947, 81-304(2).

77-2-203. Exchange for private land. (1) The board is authorized to exchange state land for private land provided that the private land is of equal or greater value than the state land and as closely as possible equal in area. The board shall place priority on exchanges which result in consolidation of state lands into more compact bodies. This section does not apply to exchanges undertaken under 76-12-107.

(2) If the requirements of subsection (1) and 77-2-204 are met, state lands bordering on navigable lakes and streams or other bodies of water with significant public use value may be exchanged for private land if the private land borders on similar navigable lakes, streams, or other bodies of water.

History: En. Sec. 1, Ch. 472, L. 1975; R.C.M. 1947, 81-307(1), (3).

77-2-204. Hearing on exchange of private land. Prior to completing any such exchange under 77-2-203, a public hearing shall be held in the county containing the state land to be exchanged. When specific objections to the proposed exchange are raised during any such hearing, the board shall make findings of fact responding to such objections and explaining their action.

History: En. Sec. 1, Ch. 472, L. 1975; R.C.M. 1947, 81-307(2).

77-2-205. Restriction on exchange for private land. No exchange under 77-2-203 shall be made which will induce or encourage large-scale commercial, industrial, or residential development unless the value of such development is considered in determining the fair market value and unless the proposed development will not adversely affect the resources of the existing state tracts or those tracts which the state would receive under the proposed exchange.

History: En. Sec. 1, Ch. 472, L. 1975; R.C.M. 1947, 81-307(4).

77-2-206 through 77-2-210 reserved.

77-2-211. Exchange of timbered, cut-over, or burned-over lands. The board may accept on behalf of the state title in fee simple to any timbered lands or lands from which the timber has been cut or burned and in exchange therefor may convey not to exceed an equal value of similar state land. However, no such exchange may be made except that which in the opinion of the board will benefit the public interest. For the purpose of such an exchange, all state lands, including those referred to in 77-2-303(3), 77-2-311, and 77-5-101, are subject to be offered for such exchange, and any restrictions against their sale or disposal are, for the purpose of such an exchange, released.

History: En. Sec. 1, Ch. 180, L. 1931; re-en. Sec. 1995.1, R.C.M. 1935; amd. Sec. 99, Ch. 428, L. 1973; R.C.M. 1947, 81-2201.

77-2-212. Rules. The board shall adopt and promulgate such rules and methods of procedure affecting or touching the exchanges of lands under 77-2-211 through 77-2-217 as in its judgment seems advisable to the end that the public interests may be conserved.

History: En. Sec. 5, Ch. 180, L. 1931; re-en. Sec. 1995.5, R.C.M. 1935; amd. Sec. 103, Ch. 428, L. 1973; R.C.M. 1947, 81-2205.

77-2-213. Department of natural resources and conservation to investigate. When a proposal for an exchange pursuant to 77-2-211 is made and the owners of the respective tracts involved seem agreeable to negotiate such exchanges, the proposal shall be referred to the department of natural resources and conservation and that department shall thoroughly investigate all the lands involved in the proposal and estimate the value of all of the lands and consider every factor in connection with the proposal as may affect the public interest.

History: En. Sec. 2, Ch. 180, L. 1931; re-en. Sec. 1995.2, R.C.M. 1935; amd. Sec. 100, Ch. 428, L. 1973; R.C.M. 1947, 81-2202.

77-2-214. Investigation and findings concerning exchange of land. (1) The department of natural resources and conservation shall, as soon as it concludes its investigation thereof, report to the board the facts disclosed by its investigation and include in its report a recommendation concerning the proposal, including its reasons therefor in writing.

(2) After considering the report and recommendation and making such further investigation as it considers advisable, the board shall consider the entire matter, make findings and conclusions concerning the proposal, and make an order:

(a) rejecting and dismissing the proposal if in the judgment of the board the exchange is not in the public interest; or

(b) accepting the proposal and ordering the exchange to be made if in the judgment of the board the exchange is in the public interest and should be made.

(3) An order accepting the proposal shall contain an accurate description of all lands to be exchanged.

History: En. Sec. 3, Ch. 180, L. 1931; re-en. Sec. 1995.3, R.C.M. 1935; amd. Sec. 101, Ch. 428, L. 1973; R.C.M. 1947, 81-2203; amd. Sec. 8, Ch. 15, L. 1979.

77-2-215. Notice and hearing concerning exchange of timbered lands. If the board approves a proposal for exchange pursuant to 77-2-211, the department of state lands shall publish at least once in some newspaper of general circulation in each county in which any of the lands involved are located a notice stating in general terms the proposal and describing the lands involved and ownership thereof. The notice shall fix a day not less than 20 and not more than 60 days from the date of the first publication at which the board will hear objections to the proposed exchange and at which any person, firm, or corporation may appear in person or by representative and be heard.

History: En. Sec. 4, Ch. 180, L. 1931; re-en. Sec. 1995.4, R.C.M. 1935; amd. Sec. 102, Ch. 428, L. 1973; R.C.M. 1947, 81-2204(1).

77-2-216. Final order of board. Within 10 days after the conclusion of the hearing, the board shall make a final order describing the terms of the proposal for the exchange of the land involved and shall either dismiss the proposal as not being in the public interest or direct the proper officers to proceed to complete the exchange, as authorized by 77-2-211.

History: **En. Sec. 4, Ch. 180, L. 1931; re-en. Sec. 1995.4, R.C.M. 1935; amd. Sec. 102, Ch. 428, L. 1973; R.C.M. 1947, 81-2204(2).**

77-2-217. Status of exchanged lands. All lands taken in exchange under 77-2-211 through 77-2-216 for lands granted by the United States to the state of Montana prior to July 1, 1931, shall be subject to the same restrictions, limitations, and provisions as the lands granted by the United States are now subject to. All lands granted by the state in carrying out such exchanges shall thereafter be free from the restrictions and limitations provided by The Enabling Act of the state of Montana or the other grant from the United States.

History: **En. Sec. 6, Ch. 180, L. 1931; re-en. Sec. 1995.6, R.C.M. 1935; R.C.M. 1947, 81-2206(part).**

Part 3

Sales

77-2-301. Sales of state land under board control. The board is hereby vested with the power and authority to decide when sales of state lands are to be held and what state lands are to be offered for sale, subject to the limitations of this title, as the best interests of the state may appear to require. As a general rule, no sale of state lands shall be held unless applications have been made for the purchase of lands within one county by prospective purchasers representing at least 12 families.

History: **En. Sec. 70, Ch. 60, L. 1927; re-en. Sec. 1805.70, R.C.M. 1935; R.C.M. 1947, 81-907.**

77-2-302. Disposition of former institutions. Notwithstanding any other section in this chapter, any lands, including buildings, formerly used as or by a state institution which are no longer used for institutional purposes may be disposed of in whole or in part on such terms and in such manner as the board, after consultation with the appropriate legislative committee, may determine to be in the state's best interest, subject to The Enabling Act and constitutional restrictions. Disposal of such property shall not be finally concluded until 60 days' public notice of the terms of the proposed disposal shall have been given.

History: **En. 81-907.1 by Sec. 1, Ch. 410, L. 1977; R.C.M. 1947, 81-907.1.**

77-2-303. Restrictions on land available for sale. (1) Lands classified as timberlands are not subject to sale, but timber thereon may be sold and disposed of in the manner provided by law.

(2) Lands which in the judgment of the board are likely to contain valuable deposits of coal, oil, oil shale, phosphate, metals, sodium, or other valuable mineral deposits are not subject to sale, either the surface land or any of such deposits therein. However, this does not prohibit the sale of lands containing sand, gravel, building stone, brick clay, or similar materials.

(3) (a) There is also reserved from sale from all state lands bordering on navigable lakes or bordering on nonnavigable meandered lakes and from all

state lands bordering on navigable streams; as the board may deem in the best interests of the state, a strip of land which shall include all the land lying between low-water mark and high-water mark and which in addition shall extend in width landward from the line of high-water mark of such lake or stream the full width of the 40-acre tract or government lot abutting the line of high-water mark. If the width of such abutting government lot at its narrowest point is less than 100 feet, then the strip hereby reserved shall extend to and include the next adjoining 40-acre tract or government lot. The land reserved from sale by this subsection shall be subject to the granting of easements the same as other state lands.

(b) Such strips of land bordering on meandering lakes or on navigable streams, except the strip lying between low-water and high-water mark, whether surveyed and platted into blocks and lots or not, may, however, be leased as provided in this title for the leasing of other state lands.

History: (1), (2)En. Sec. 64, Ch. 60, L. 1927; re-en. Sec. 1805.64, R.C.M. 1935; amd. Sec. 55, Ch. 428, L. 1973; Sec. 81-901, R.C.M. 1947; (3)En. Sec. 66, Ch. 60, L. 1927; re-en. Sec. 1805.66, R.C.M. 1935; amd. Sec. 7, Ch. 257, L. 1965; Sec. 81-903, R.C.M. 1947; R.C.M. 1947, 81-901, 81-903(part).

77-2-304. Mineral reservations in state lands. All coal, oil, oil shale, gas, phosphate, sodium, and other mineral deposits in state lands, except sand, gravel, building stone, and brick clay, which were not reserved by the United States before July 1, 1927, are reserved to the state. All those deposits are reserved from sale except upon a rental and royalty basis as provided by law. A purchaser of state lands acquires no right, title, or interest in or to any of those deposits. The state also reserves for itself and its lessees the right to enter upon these lands to prospect for, develop, mine, and remove those deposits and to occupy and use so much of the surface of the lands as may be required for all purposes reasonably extending to the exploring for, mining, and removal of the deposits therefrom, but the lessee shall make just payment to the purchaser for all damage done by reason of such entry upon the land and the use and occupancy of the surface thereof.

History: En. Sec. 65, Ch. 60, L. 1927; amd. Sec. 1, Ch. 28, L. 1929; amd. Sec. 1, Ch. 183, L. 1935; re-en. Sec. 1805.65, R.C.M. 1935; amd. Sec. 1, Ch. 184, L. 1961; amd. Sec. 56, Ch. 428, L. 1973; R.C.M. 1947, 81-902; amd. Sec. 1, Ch. 157, L. 1981.

Compiler's Comments

1981 Amendment: Deleted subsection (2) which made reference to mineral reservations applying to sale of lands to the United States under 77-2-316 (repealed by sec. 4, Ch. 157, L. 1981).

Effective Date: Section 5, Ch. 157, L. 1981, provided: "This act is effective on passage and approval." Approved March 26, 1981.

77-2-305. Lands within federal irrigation projects. Whenever state lands are located within the boundaries of federal irrigation projects, the land shall be sold in conformity with the classification of farm units as made by the United States, and all certificates of purchase issued for such lands shall show that the lands are located within a federal irrigation project and are or will be liable for their proper share of the reclamation charges.

History: En. Sec. 69, Ch. 60, L. 1927; re-en. Sec. 1805.69, R.C.M. 1935; R.C.M. 1947, 81-906.

77-2-306. Who may purchase. (1) State lands shall be sold only to citizens of the United States or to persons who have declared their intentions to become citizens or to corporations organized under the laws of this state.

No person shall be qualified to purchase state land who has not reached the age of 18 years. As far as possible to determine, the lands shall be sold only to actual settlers or to persons who will improve the same and not to persons who are likely to hold such lands for speculative purposes intending to resell the same at a higher price without having added anything to their value.

(2) State lands may be sold to any sovereign state of the United States or to any board of trustees or public corporation or agency of such state created by such state as an agency or political subdivision thereof. Said lands may be purchased in the quantities set forth in 77-2-307 for use by such state, board of trustees, public corporation, agency, or political subdivision for educational or scientific purposes.

History: En. Sec. 71, Ch. 60, L. 1927; re-en. Sec. 1805.71, R.C.M. 1935; amd. Sec. 1, Ch. 95, L. 1949; amd. Sec. 1, Ch. 10, L. 1959; amd. Sec. 2, Ch. 184, L. 1961; amd. Sec. 19, Ch. 240, L. 1971; amd. Sec. 31, Ch. 94, L. 1973; R.C.M. 1947, 81-908(part).

77-2-307. Limitation on acreage. No person or corporation shall be entitled to purchase more than one section of state land, and this area shall not include more than 160 acres of land susceptible of irrigation. These limitations as to area and irrigability shall not apply to lands within a federal irrigation project wherein the Congress of the United States of America authorizes water to be furnished to an area exceeding 160 irrigable acres.

History: En. Sec. 71, Ch. 60, L. 1927; re-en. Sec. 1805.71, R.C.M. 1935; amd. Sec. 1, Ch. 95, L. 1949; amd. Sec. 1, Ch. 10, L. 1959; amd. Sec. 2, Ch. 184, L. 1961; amd. Sec. 19, Ch. 240, L. 1971; amd. Sec. 31, Ch. 94, L. 1973; R.C.M. 1947, 81-908(part).

77-2-308. Approval or disapproval of sales. All sales of state lands shall be subject to the approval and confirmation by the board, and no sale shall be deemed completed until after such approval and confirmation. The board shall have the power and it shall be its duty to disapprove any sale which in its opinion would be disadvantageous to the state.

History: En. Sec. 82, Ch. 60, L. 1927; re-en. Sec. 1805.82, R.C.M. 1935; R.C.M. 1947, 81-918(part).

77-2-309. Discretion of board with respect to surveying and platting. Except as provided in 77-2-312, it shall be entirely optional with the board whether or not state lands or any part thereof shall be surveyed, platted, and laid off into blocks and lots as herein provided, as may appear to be for the best interests of the state.

History: En. Sec. 68, Ch. 60, L. 1927; re-en. Sec. 1805.68, R.C.M. 1935; amd. Sec. 41, Ch. 100, L. 1973; R.C.M. 1947, 81-905(part).

77-2-310. Certain lands to be platted before sale. (1) Any part of state lands adjacent to cities or towns and other state lands which in the opinion of the board may be wanted for residence or business lots shall before sale, at such time as the board may deem to be for the best interests of the state, be surveyed and laid off in blocks, lots, streets, alleys, avenues, highways, public squares, market places, and parks in conformity with the laws of the state for the survey and platting of townsites and additions thereto, conforming as nearly as may be with the ordinances of such city or town regarding the platting of additions thereto. The board must cause correct maps and plats of such lands to be made and recorded when so surveyed and not otherwise. No fee shall be charged by the county recorder or by any city officer for filing or recording such maps or plats when recorded on behalf of the state.

(2) Before the lands so surveyed and laid off are offered for sale the same shall be appraised, a separate appraisal to be placed on each lot. Such surveyed and platted land may then be sold in the same manner and upon the same terms and conditions as other state lands are sold.

History: En. Sec. 67, Ch. 60, L. 1927; re-en. Sec. 1805.67, R.C.M. 1935; R.C.M. 1947, 81-904.

77-2-311. Survey and plat of shore lands. The board may in its discretion cause any part of the lands bordering on lakes described in 77-2-303(3) and on navigable streams which are reserved from sale to be surveyed and platted into blocks and lots, the lots to be not less than 125 feet in width, the width to be measured in the general direction of the abutting water front; but in all such surveys and plats the strip of 100 feet in width along the water front, referred to in 77-2-303(3)(a), shall be reserved for the use and enjoyment of the public.

History: En. Sec. 66, Ch. 60, L. 1927; re-en. Sec. 1805.66, R.C.M. 1935; amd. Sec. 7, Ch. 257, L. 1965; R.C.M. 1947, 81-903(part).

77-2-312. Subdivision of lands in or near municipalities. (1) All lands within the limits of any town or city or within 3 miles of such limits shall be subdivided into lots or tracts of not more than 5 acres each before being offered for sale and the lots must then be sold alternately at regular sales of state lands.

(2) When such tracts of 5 acres or less have been sold, the board shall, whenever deemed necessary, cause the plat thereof to be filed for record with the county clerk and recorder of the county in which the land is situated, but if the same purchaser bids in two or more adjoining lots or tracts, all the lots so purchased shall at the option of the purchaser be included in one certificate of purchase.

History: En. Sec. 68, Ch. 60, L. 1927; re-en. Sec. 1805.68, R.C.M. 1935; amd. Sec. 41, Ch. 100, L. 1973; R.C.M. 1947, 81-905(part).

77-2-313. Land subject to taxation. (1) State lands purchased from the state are subject to taxation to the full value thereof. The department of revenue shall assess the purchaser for the full value of the land on January 1 following the date of purchase. The holder of certificates of purchase to lands within irrigation districts is liable for the entire tax levied against the land thereunder on account of such irrigation district.

(2) The improvements on the land shall be assessed and taxed as other improvements on farm lands.

(3) On or before January 15 of each year, the department shall furnish the department of revenue or its agent in each county with a complete list of all state lands sold in his county during the year ending on the previous December 31. This list shall show the name and address of the purchaser, the legal description of the land, and the acreage contained therein.

History: En. Sec. 92, Ch. 60, L. 1927; re-en. Sec. 1805.92, R.C.M. 1935; amd. Sec. 1, Ch. 107, L. 1953; amd. Sec. 52, Ch. 391, L. 1973; amd. Sec. 67, Ch. 428, L. 1973; amd. Sec. 7, Ch. 388, L. 1975; R.C.M. 1947, 81-928.

77-2-314. Reversion of lands to state. If any lands sold under this title revert to the state for any reason, the department shall notify the department of revenue and the county treasurer of the county in which the land is situated of that fact. Upon the receipt of the notice, the department of revenue shall cancel any assessment of the land for that year, and the county treasurer shall cancel all tax liens against the land.

History: En. Sec. 94, Ch. 60, L. 1927; re-en. Sec. 1805.94, R.C.M. 1935; amd. Sec. 53, Ch. 391, L. 1973; amd. Sec. 68, Ch. 428, L. 1973; R.C.M. 1947, 81-930.

77-2-315. Participation in irrigation districts — lien status of land. (1) A purchaser of state lands is hereby authorized and empowered to sign any petition that he may desire to sign for the creation of an irrigation district and the inclusion of the land purchased from the state in such irrigation district and any other petition relating to irrigation districts affecting the land so purchased by him from the state. Such petition or petitions shall have the effect of making all the interest that he then has in such land purchased from the state and all interest which he may subsequently acquire therein subject to the same liens and charges as privately owned lands under such irrigation district; and if for any reason his certificate to such state lands and his rights thereunder should be canceled and later such certificate be reinstated or a new certificate issued, such liens and charges shall stand against the interest in such lands of the holder of such certificate.

(2) The board for and on behalf of the state of Montana is hereby empowered to sign a petition for the inclusion of any lands belonging to the state in an irrigation district organized or to be organized for the purpose of cooperating with the United States under the federal reclamation laws or any act of congress relating to reclamation projects and to sign any petition for the execution of a contract between such district and the United States. The interest of the state in any lands within an irrigation district shall not be subject to assessment or taxation for any purpose whatever, nor shall the state be liable for the payment of any costs or charges whatever arising from the fact that its lands are included within an irrigation district.

(3) The interest of a purchaser of state lands in the land purchased shall be subject to the same liens as other real estate; provided, however, that in the case of sale, only the interest of the purchaser or of the assignee shall be sold. In the case of any sale under the provisions of this section, including the sale for taxes, the purchaser shall succeed to all the rights of the purchaser from the state under the certificate of purchase and a new certificate of purchase shall be issued to the person entitled thereto upon satisfactory proof being submitted to the board. In the case of sale under execution or decree of court such new certificate of purchase shall not be issued by the board until the period of redemption from such sale has expired and the sheriff's deed has been issued. In the case of sale for taxes, the new certificate shall not be issued until the tax deed has been issued.

History: En. Sec. 93, Ch. 60, L. 1927; amd. Sec. 1, Ch. 58, L. 1929; re-en. Sec. 1805.93, R.C.M. 1935; R.C.M. 1947, 81-929.

77-2-316. Repealed. Sec. 4, Ch. 157, L. 1981.

History: En. Sec. 56, Ch. 60, L. 1927; amd. Secs. 1, 2, 3 and 4, Ch. 37, Ex. L. 1933; re-en. Sec. 1805.56, R.C.M. 1935; amd. Sec. 1, Ch. 80, L. 1945; amd. Sec. 52, Ch. 428, L. 1973; R.C.M. 1947, 81-801(1), (5), (6).

77-2-317 through 77-2-320 reserved.

77-2-321. Sales to be at public auction. All sales of state lands shall be only at public auction held at the county courthouse of the county in which the lands are located. In case no suitable room can be found in such courthouse at the time for holding the sale, then the sale may be transferred to a more convenient place within a reasonable distance of such courthouse by public announcement made at the courthouse at the time fixed for beginning the sale.

History: En. Sec. 72, Ch. 60, L. 1927; re-en. Sec. 1805.72, R.C.M. 1935; amd. Sec. 3, Ch. 184, L. 1961; R.C.M. 1947, 81-909.

77-2-322. Notice of sale. (1) The department shall give notice of each sale by publication in a newspaper of general circulation in the county where the sale is to be held, once each week through the 4 consecutive weeks preceding the date of sale. The notice shall give the day, date, and time of the beginning of the sale and contain a list of all the tracts to be offered for sale showing the township and range in which they are located, describing them with reference to section number and subdivision of the section or with reference to block and lot if surveyed, the number of acres in unplatted lands, and the appraised value per acre and the appraised value of each lot. As a general rule, nonirrigable farming lands shall be listed in quarter sections; grazing lands may be listed in larger tracts not exceeding one section.

(2) For the convenience of the bidders, the department may assign to the tracts advertised a consecutive series of sales numbers and show the sales number of each tract in the notice of sale.

(3) The notice shall also give the terms and conditions of sale and any additional information the department considers useful.

History: En. Sec. 73, Ch. 60, L. 1927; re-en. Sec. 1805.73, R.C.M. 1935; amd. Sec. 4, Ch. 184, L. 1961; amd. Sec. 57, Ch. 428, L. 1973; R.C.M. 1947, 81-910.

77-2-323. Sale procedure and limitation. (1) At the time fixed for the sale, the lands shall be offered for sale at auction in the order they appear in the notice of sale. Under the direction of the department the lands shall be sold to the highest qualified bidder under the following restrictions:

(a) No lands may be sold for less than the appraised value.

(b) Tillable lands capable of producing agricultural crops may not be sold for less than $10 per acre.

(c) Lands principally valuable for grazing purposes may not be sold for less than $5 per acre.

(2) The lands shall be sold as nearly as practicable according to the subdivisions in which they are advertised, and care shall be taken not to subdivide any tract in such a way as to separate remaining portions from a water supply or from section lines or public highways.

(3) The sale may be adjourned from day to day until all the lands advertised have been offered for sale.

(4) If any successful bidder at a sale refuses or neglects to make the initial payment required to be made on the land purchased by him, he shall forfeit to the state not less than $50 or more than $1,000 to be determined by the board according to the circumstances of the case. If such forfeiture is not

paid when notice of the amount of the forfeiture has been served by the department, the attorney general shall sue for the recovery thereof in the name of the state.

History: En. Sec. 75, Ch. 60, L. 1927; amd. Sec. 1, Ch. 177, L. 1933; re-en. Sec. 1805.75, R.C.M. 1935; amd. Sec. 5, Ch. 184, L. 1961; amd. Sec. 58, Ch. 428, L. 1973; R.C.M. 1947, 81-912(part).

77-2-324. Preference to lessee of land. The lessee of the land need not make a higher bid than others, but he shall, if bidding an equal amount, be given the preference.

History: En. Sec. 75, Ch. 60, L. 1927; amd. Sec. 1, Ch. 177, L. 1933; re-en. Sec. 1805.75, R.C.M. 1935; amd. Sec. 5, Ch. 184, L. 1961; amd. Sec. 58, Ch. 428, L. 1973; R.C.M. 1947, 81-912(part).

77-2-325. Settlement for improvements. If any state land is sold on which there are improvements belonging to a lessee and some person other than the lessee is the purchaser, that person shall settle with the lessee for all improvements on the land belonging to the lessee before the issuance of the certificate of purchase. The provisions of 77-6-301 through 77-6-306 relating to the payment and settlement for improvements on state lands between a former lessee and a new lessee apply to the settlement between a lessee and the purchaser. If settlement is not reached within 6 months of date of sale, all improvements become the property of the state unless the department for good cause shown grants both parties additional time in which to exhaust arbitration.

History: En. Sec. 83, Ch. 60, L. 1927; re-en. Sec. 1805.83, R.C.M. 1935; amd. Sec. 9, Ch. 257, L. 1965; amd. Sec. 61, Ch. 428, L. 1973; R.C.M. 1947, 81-919.

77-2-326. Time of possession. In the case of lands under lease the purchaser shall be given possession by the state on March 1 next succeeding the date of sale and not before unless the lease expires prior to that date, except through special agreement between the purchaser and the lessee.

History: En. Sec. 84, Ch. 60, L. 1927; re-en. Sec. 1805.84, R.C.M. 1935; R.C.M. 1947, 81-920.

77-2-327. Certificate of purchase. (1) Upon the approval of the sale and receipt of satisfactory evidence of settlement with the former lessee, if any, for improvements on the land, the department shall execute and mail to the purchaser a certificate of purchase signed by the governor as president of the board and by the commissioner of state lands and attested by the seal of the board. The certificate of purchase shall contain the date of sale, the name and post-office address of the purchaser, a description of the land, the total purchase price, the amount paid on the day of sale, the balance unpaid, and the amount and due date of each installment of principal and interest to the time of maturity. The certificate shall reserve the easements for rights-of-way granted by the statutes in favor of the United States and other easements that may have been granted by the board and shall contain the reservations in favor of the state provided for in 77-2-304 relating to coal, oil, and mineral rights in the land.

(2) The certificate shall also contain information in regard to the lien of the state on crops and improvements on the land for installments of principal and interest and taxes and any additional conditions, agreements, and

information the board considers necessary in order to carry out the intent of this part.

History: En. Sec. 85, Ch. 60, L. 1927; re-en. Sec. 1805.85, R.C.M. 1935; amd. Sec. 62, Ch. 428, L. 1973; R.C.M. 1947, 81-921; amd. Sec. 2, Ch. 157, L. 1981.

Compiler's Comments

1981 Amendment: Deleted reference to subsection (1) of 77-2-304 in the last sentence of (1).

Effective Date: Section 5, Ch. 157, L. 1981, provided: "This act is effective on passage and approval." Approved March 26, 1981.

77-2-328. Additional rules. The board may prescribe such additional rules for the conduct of these sales as in its judgment the interests of the state may demand.

History: En. Sec. 76, Ch. 60, L. 1927; re-en. Sec. 1805.76, R.C.M. 1935; R.C.M. 1947, 81-913.

77-2-329. Terms of payment. (1) Every purchaser of state land shall pay on the day of sale that portion of the purchase price as he may desire, but in no case less than 10% of the total sales price. In case the balance on the purchase price is not an exact multiple of $25, then he shall pay such additional sum as is necessary to reduce the balance to an even multiple of $25.

(2) The balance of the purchase price shall draw interest at the rate set by the board, but in no instance shall the rate be less than 5% per year, payable annually, and the balance of the purchase price itself shall be payable through a period of 33 years on the amortization plan. This plan is defined as being that plan under which part of the principal is required to be paid each time interest becomes due and payable and under which this part payment on the principal increases at each succeeding installment in the same amount that the interest payment decreases so that the combined amount due on principal and interest on each due date remains the same until the loan or bond is paid in full. However, the amount of the last installment may vary from the other installments to the extent resulting from disregarding fractional cents in the previous installments. The balance of the purchase price on town and city lots shall be payable on the amortization plan through a period of 20 years, but the board may at any time fix a shorter period than 20 years for the payment of the balance on town and city lots. Different periods of time may be established for different towns and cities as the best interests of the state demand. The board shall annually review the interest rate prior to December 31 of each year and fix the interest rate for all contracts to be entered into during the succeeding year.

History: En. Sec. 79, Ch. 60, L. 1927; re-en. Sec. 1805.79, R.C.M. 1935; amd. Sec. 1, Ch. 149, L. 1939; amd. Sec. 8, Ch. 257, L. 1965; amd. Sec. 10, Ch. 22, L. 1971; amd. Sec. 59, Ch. 428, L. 1973; amd. Sec. 1, Ch. 191, L. 1974; R.C.M. 1947, 81-915.

77-2-330. Computation of interest and payment schedule. The balance of the purchase price shall draw interest from the date on which the sale was confirmed and approved by the board, and all installments on principal and interest shall become due and payable on that date in each succeeding year until payment has been made in full.

History: En. Sec. 86, Ch. 60, L. 1927; re-en. Sec. 1805.86, R.C.M. 1935; R.C.M. 1947, 81-922.

77-2-331. Manner of making payments. (1) The department is not required to accept fractional payments of the installments on certificate of purchase on account of the complications arising from the division of payments.

(2) The purchaser may make payment of one or more installments before the same becomes due, but unless such payments are made at least 6 months before the installments become due, no reduction may be made in the interest payments. If installments on principal and interest are paid more than 6 months prior to the due date, the interest from the date of such payment shall be figured upon the balance of the principal unpaid after the advance payment has been made up to the date on which it comes due.

(3) If for any reason any installment is not paid when due, the total of that installment, including payment on the principal and payment on interest, shall draw penalty interest at the rate of 6% per annum from the date due until the date actually paid.

(4) Payment may be made in full at any time before maturity by paying the balance on the principal and interest accrued up to the date of such payment.

History: **En. Sec. 87, Ch. 60, L. 1927; re-en. Sec. 1805.87, R.C.M. 1935; amd. Sec. 63, Ch. 428, L. 1973; R.C.M. 1947, 81-923.**

77-2-332. Procedure in case of default. (1) If any purchaser or assignee of state land defaults for a period of 30 days or more in the payment of any of the installments due on his certificate of purchase, the certificate is subject to cancellation. The department shall mail to him at his last known post-office address a notice of default and pending cancellation. The notice shall give him 60 additional days from the date of mailing the notice in which to make payment of the delinquent installment or installments with penalty interest.

(2) If he fails to make the payment within 60 days, the certificate of purchase shall from that date and without further notice be void, the duplicate of the certificate in the office of the department shall be canceled, and the land under the certificate shall revert to and become the property of the state to the same extent as other state lands and shall be open to lease and sale.

(3) All buildings, fences, and other improvements placed thereon subsequent to the date of execution of the certificate of purchase shall be and remain the property of the purchaser named in the certificate of purchase or of his heirs, assigns, or devisees and may be removed from the land at any time within 90 days after the date of the cancellation. If the buildings, fences, and other improvements are not removed prior to the expiration of the 90-day period, they become the property of the state.

(4) In case of cancellation of certificate of purchase or surrender of certificate of purchase and where the land is again open to lease, the former lessee has the prior right to lease the tract at the existing rate or at the rate set by competitive bidding if such occurs.

History: **En. Sec. 88, Ch. 60, L. 1927; re-en. Sec. 1805.88, R.C.M. 1935; amd. Sec. 4, Ch. 141, L. 1939; amd. Sec. 1, Ch. 159, L. 1951; amd. Sec. 64, Ch. 428, L. 1973; R.C.M. 1947, 81-924.**

77-2-333. Reinstatement of canceled certificates of purchase. (1) In all cases where a certificate of purchase of state lands has been canceled and annulled as provided by law and the lands under such certificate have not been resold to another purchaser, the board may in its discretion reinstate the canceled certificate upon:

(a) proper application made in writing by the original purchaser or his heirs, assigns, or devisees, filed within 1 year and 6 months from such cancellation;

(b) payment of all delinquent installments of principal and interest on the certificate, together with penalty interest at the rate of 6% per annum upon all such delinquent installments from the date due until the date of actual payment; and

(c) the furnishing of proof from the county treasurer showing that there are no tax liens against the land.

(2) This reinstatement shall not have the effect of canceling any lease that the state may have issued on the land or affecting any of the provisions of said lease.

History: **En. Sec. 89, Ch. 60, L. 1927; amd. Sec. 1, Ch. 101, L. 1929; re-en. Sec. 1805.89, R.C.M. 1935; R.C.M. 1947, 81-925.**

77-2-334. Assignment of certificate. Certificates of purchase may be assigned to a citizen of the United States or to a person who has declared his intention to become a citizen or to a corporation organized under the laws of this state. Such assignments shall be made on forms prescribed by the department, shall be duly acknowledged as other conveyances of real estate, and shall be executed in duplicate, one copy to be filed and retained in the office of the department and one copy to be retained by the assignee. A person is not qualified to receive an assignment if the lands he has already purchased from the state together with the lands included in the assignment exceed one section. The assignee must in all respects possess the same qualifications as an original purchaser.

History: **En. Sec. 90, Ch. 60, L. 1927; re-en. Sec. 1805.90, R.C.M. 1935; amd. Sec. 65, Ch. 428, L. 1973; R.C.M. 1947, 81-926.**

77-2-335. Lost certificate. If a certificate of purchase to state lands is lost or is wrongfully withheld by any person from the owner thereof, the rightful owner may apply to the board for the issuance of a substitute certificate. This application shall be accompanied by an affidavit from the owner of the certificate setting forth the facts in regard to the loss or unlawful withholding of the certificate and by a certificate from the county clerk and recorder of the county in which the land is located showing all instruments of record in his office affecting the title to the land under the certificate. The board shall issue a substitute certificate of purchase to the applicant if in the judgment of the board the facts warrant its issue.

History: **En. Sec. 91, Ch. 60, L. 1927; re-en. Sec. 1805.91, R.C.M. 1935; amd. Sec. 66, Ch. 428, L. 1973; R.C.M. 1947, 81-927.**

77-2-336. Lien on improvements and crops for amount due state. (1) The state has a lien prior and superior to all other liens, except threshermen's liens and seed liens as specified in 71-3-701 and 71-3-801, which have priority, but only for the aggregate amount of the indebtedness then existing, including any advances theretofore made, interest due, and other charges, as evidenced by the original loan contract and indebtedness thereafter accumulating on such basis, exclusive of any other future advances originally contemplated. This lien is upon all buildings, structures, fences, and all other improvements upon the lands so sold and upon all crops growing upon any of these lands and also upon such crops after they have been separated from the lands for all due and delinquent installments of principal and interest and penalty interest and taxes under the certificate of purchase and also for all installments becoming due during the calendar year in which the crop is harvested, and this lien is hereby expressly reserved.

(2) Any person purchasing or otherwise acquiring the improvements or crops or any part thereof takes them subject to the lien.

(3) Any representative of the department or the sheriff of the county in which the land is located or his deputy may demand of the purchaser or his agent payment of the amounts due the state, and if they are not paid upon demand, the officer making the demand or any representative of the department may immediately seize the improvements and crops, and upon giving 3 days' notice, sell and dispose of, either at private or public sale, sufficient of the crops or improvements or of both to pay the amounts due the state, together with cost and expenses of seizure and sale.

History: En. Sec. 81, Ch. 60, L. 1927; re-en. Sec. 1805.81, R.C.M. 1935; amd. Sec. 60, Ch. 428, L. 1973; R.C.M. 1947, 81-917.

77-2-337. Disposition of sale proceeds. (1) The proceeds from the lands sold, including all subsequent payments on the principal, shall be credited to the permanent fund arising from the grant to which it belongs and shall become and forever remain an inseparable and inviolable part thereof.

(2) All payments on interest shall be credited to the proper income fund and shall be available for use as provided by law.

History: En. Sec. 75, Ch. 60, L. 1927; amd. Sec. 1, Ch. 177, L. 1933; re-en. Sec. 1805.75, R.C.M. 1935; amd. Sec. 5, Ch. 184, L. 1961; amd. Sec. 58, Ch. 428, L. 1973; R.C.M. 1947, 81-912(4).

77-2-338 through 77-2-340 reserved.

77-2-341. Patents. When the purchase price has been paid in full together with interest according to the certificate, the owner thereof shall be entitled to receive a patent for the land under such certificate.

History: En. Sec. 95, Ch. 60, L. 1927; re-en. Sec. 1805.95, R.C.M. 1935; R.C.M. 1947, 81-931.

77-2-342. Execution of patents. (1) The governor and, in his absence or inability, the lieutenant governor shall execute deeds or patents of conveyance transferring without covenants any lands sold by the board under the laws of this state when full payment has been made therefor.

(2) The deed or patent shall be attested by the secretary of state, countersigned by the commissioner of state lands, and have the great seal of the state and the seal of the board thereto attached but need not be acknowledged.

History: En. Sec. 96, Ch. 60, L. 1927; re-en. Sec. 1805.96, R.C.M. 1935; amd. Sec. 69, Ch. 428, L. 1973; R.C.M. 1947, 81-932(part).

77-2-343. Patent provisions. (1) Such deed or patent shall contain the reservation of easements for rights-of-way to the United States, reservation of all minerals in the land as provided in 77-2-304, and all other reservations to which the particular land conveyed is subject.

(2) If the land is located within the boundaries of a federal irrigation project, the patent shall contain a lien clause substantially in the following form: The land hereby conveyed is located within the boundaries of a federal irrigation project and is subject to all liens which the United States may have thereon by reason of its being located under such irrigation project.

(3) This section does not require any reservation in a patent which was not an express or implied reservation in the certificate of purchase pursuant to which the patent is issued. The statutes in effect when such certificate of purchase was issued must govern.

History: En. Sec. 96, Ch. 60, L. 1927; re-en. Sec. 1805.96, R.C.M. 1935; amd. Sec. 69, Ch. 428, L. 1973; R.C.M. 1947, 81-932(part); amd. Sec. 3, Ch. 157, L. 1981.

Compiler's Comments

1981 Amendment: Deleted reference to subsection (1) of 77-2-304 in (1).

Effective Date: Section 5, Ch. 157, L. 1981, provided: "This act is effective on passage and approval." Approved March 26, 1981.

77-2-344. Copy of deed or patent as evidence. A certified copy of the record of any such deed or patent shall be received in evidence in all courts of record of this state the same as the original.

History: En. Sec. 96, Ch. 60, L. 1927; re-en. Sec. 1805.96, R.C.M. 1935; amd. Sec. 69, Ch. 428, L. 1973; R.C.M. 1947, 81-932(part).

77-2-345. Limitation for cancellation of patent. No action shall be brought to vacate or cancel any patent issued by the state after the expiration of 2 years from the date of such patent except upon the ground of fraud.

History: En. Sec. 97, Ch. 60, L. 1927; re-en. Sec. 1805.97, R.C.M. 1935; R.C.M. 1947, 81-933.

CHAPTER 3

ROCK, MINERAL, COAL, OIL, AND GAS RESOURCES

Part 1 — Prospecting Permits and Mining Leases

Section

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Part 1

Prospecting Permits and Mining Leases

77-3-101. Definitions. In this part the following definitions apply:

(1) "Full market value" means the highest net value of products of mining operations in United States markets, less cost of transportation and refining, not including as a deduction any cost of producing or treating at the mine.

(2) "Gems" means sapphires, rubies, and other stones commonly known as "precious stones" or "semiprecious stones", but does not mean stones or other earth materials commonly used in building or construction work.

(3) "Metalliferous minerals" means gold, silver, lead, zinc, copper, platinum, iron, and all other metallic minerals.

(4) "Mining" means the carrying on of operations of any kind for the purpose of extracting from the earth ore and other earth material containing metalliferous minerals or gems and includes operations of any kind for the extraction from ores and other earth material of metalliferous minerals or gems.

(5) "Mining lease" means a lease issued by the board for the prospecting for or mining of metalliferous minerals or gems.

(6) "Mining lessee" means the holder of a mining lease whether the holder is the original lessee under the lease or holds the lease as successor of the original lessee.

(7) "Returns" means the net amount received by the shipper from products of mining operations after deducting transportation costs, smelting

charges and deductions, and other treatment costs, not including as a deduction any cost of producing or treating at the mine.

History: En. Sec. 1, Ch. 148, L. 1937; amd. Sec. 35, Ch. 428, L. 1973; R.C.M. 1947, 81-601.

77-3-102. Mining leases authorized. (1) The board may, in its discretion, subject to the other provisions of this part, lease state lands, including the beds of navigable streams and the beds of navigable bodies of water and the reserved mineral rights of the state in lands sold or leased by the state, to any person, association, or corporation, for the purpose of prospecting for or mining metalliferous minerals or gems.

(2) These leases may be for a period of time determined by the board, subject to limitations contained in the grants by which the state has acquired title to lands or mineral rights so leased.

(3) Leases issued under this part shall give the lessee, so long as he complies with the terms and conditions of the lease, the exclusive right of possession of the lands or mineral rights leased, subject to any reservations contained in the leases.

(4) In short the board in making the leases may exercise business discretion, so long as this part is not violated.

History: (1), (2)En. Sec. 2, Ch. 148, L. 1937; amd. Sec. 36, Ch. 428, L. 1973; Sec. 81-602, R.C.M. 1947; (3),(4)En. Sec. 3, Ch. 148, L. 1937; amd. Sec. 1, Ch. 205, L. 1947; amd. Sec. 37, Ch. 428, L. 1973; Sec. 81-603, R.C.M. 1947; R.C.M. 1947, 81-602, 81-603(part).

77-3-103. Prospecting permits authorized. Prospecting permits without lease may be issued by the board upon the payment of the issuance fee under 77-1-302. The permittee shall also pay an annual fee established by the department and approved by the board at the end of each year during the life of the permit. A permit shall provide for due diligence in the work of prospecting during the life of the permit.

History: En. Sec. 15, Ch. 148, L. 1937; amd. Sec. 9, Ch. 22, L. 1971; Sec. 81-615, R.C.M. 1947; redes. 81-601.1 and amd. by Sec. 47, Ch. 428, L. 1973; R.C.M. 1947, 81-601.1(part).

77-3-104. Notice of lease or permit approval. Upon the approval of an application for a prospecting permit or a mining lease under this part, the department shall promptly give written notice, by ordinary mail, to the lessee or permittee and to any holder of an agricultural or grazing lease embracing the same land or to any holder of a certificate of purchase or patent embracing the same land. The notice shall be addressed to the permittee, mining lessee, agricultural or grazing lessee, purchaser or patentee at his last known post-office address.

History: En. Sec. 16, Ch. 148, L. 1937; amd. Sec. 48, Ch. 428, L. 1973; R.C.M. 1947, 81-616.

77-3-105. Assignment of leases or permits. In case of the assignment of a mining lease or a prospecting permit by the holder thereof, the mining lessee or permittee executing the assignment is not relieved of any responsibility for operations under the lease or prospecting permit until:

(1) the financial and moral responsibility of the assignee has been approved by the board; and

(2) there is deposited with the department:

(a) the assignment or an executed copy thereof;

(b) an instrument executed by the sureties upon any bonds then held by the board in connection with the mining lease or permit and then in force, consenting to the assignment and containing the agreement of the sureties to be bound by the bonds under the assignment or new bonds conforming to all the requirements of 77-3-119; and

(c) a fee prescribed under 77-1-302.

History: **En. Sec. 13, Ch. 148, L. 1937; amd. Sec. 8, Ch. 22, L. 1971; amd. Sec. 45, Ch. 428, L. 1973; R.C.M. 1947, 81-613.**

77-3-106. Disposition of royalties, fees, and penalties. All fees and penalties collected under this part shall be credited to the state general fund; all rentals shall be credited to the income fund of the grant to which the land belongs; and all moneys collected as royalties shall be credited to the permanent fund arising from the grant to which the land belongs under each particular permit or lease; provided, however, that all rentals and royalties received from "mortgage lands" shall be credited to the same fund or funds as other receipts from such lands and that all rentals and royalties received under or in connection with a lease or permit on other lands or mineral rights not acquired through any grant to the state of Montana from the United States shall be paid into the same funds into which such receipts are paid when the land is part of the grant for the benefit of the public schools of the state of Montana.

History: **En. Sec. 17, Ch. 148, L. 1937; R.C.M. 1947, 81-617.**

77-3-107 through 77-3-110 reserved.

77-3-111. Applications for mining lease. Application for a mining lease shall be made to the department on a form prescribed by it.

History: **En. Sec. 6, Ch. 148, L. 1937; amd. Sec. 7, Ch. 22, L. 1971; amd. Sec. 40, Ch. 428, L. 1973; R.C.M. 1947, 81-606.**

77-3-112. Examination of lands prior to leasing. (1) Before the board leases any lands for the mining of metalliferous metals or gems, the department shall investigate the character of the lands and the nature and possible extent of the mineral deposits therein for the purpose of determining whether those lands are of such a character as to warrant the issuance of a mining lease thereon and for the purpose of determining the amount of royalty and other rentals or considerations for which the lands should be leased for mining purposes under this part.

(2) Upon the filing of an application for a mining lease the board may, if the lands covered by the application have not been examined by the department, require the applicant for the lease to deposit with the department an amount of money, not exceeding $500 in any one case, which in its judgment will cover the cost of a special examination to enable the board to pass upon the application in accordance with this part. Such deposit shall be used to reimburse the state for the actual cost of the examination, and any portion of the deposit not required for such reimbursement shall, upon the approval or rejection of the application, be repaid to the applicant by the department.

(3) The department shall make and preserve complete records of all such examinations.

History: **En. Sec. 11, Ch. 148, L. 1937; amd. Sec. 43, Ch. 428, L. 1973; R.C.M. 1947, 81-611.**

77-3-113. Quantity of lands covered by lease. A mining lease shall cover the quantity of ground the board determines to be reasonable and consistent with the character of the ground, the type of deposit or deposits for which the lands are to be mined, and the character and size of the operation contemplated, necessary, or reasonable in good mining practice for the profitable recovery of the metalliferous minerals or gems therefrom.

History: En. Sec. 5, Ch. 148, L. 1937; amd. Sec. 39, Ch. 428, L. 1973; R.C.M. 1947, 81-605.

77-3-114. Restrictions on mining leases on lands already subject to coal, oil, or gas lease. In the case of lands covered by a lease for the mining of coal, oil, or gas, no lease for the mining upon any such land for metalliferous minerals and/or gems shall be issued to any person, association of persons, or corporation, other than the holder of such coal, oil, or gas lease while such coal, oil, or gas lease is in force, except with the written consent of the holder of such coal, oil, or gas lease.

History: En. Sec. 10, Ch. 148, L. 1937; R.C.M. 1947, 81-610.

77-3-115. Lease provisions. (1) A lease may contain reasonable provisions for preliminary prospecting periods and shall contain reasonable requirements for the prosecution of work during the prospecting period (if any) and for the prosecution of mining after the prospecting period.

(2) It may provide for the payment of rentals in conjunction with the work requirements or may prescribe cash rentals as an alternative or otherwise as the board considers best.

(3) It shall specify the term of the lease, the royalty to be paid, reasonable forfeiture provisions, and reasonable terms under which the lessee may, within a time limited in the lease, remove property placed upon the leased lands by him in the event of the termination of the lease by forfeiture or by lapse of time.

(4) It may also contain other provisions the board and the lessee agree upon, not inconsistent with this part.

History: En. Sec. 3, Ch. 148, L. 1937; amd. Sec. 1, Ch. 205, L. 1947; amd. Sec. 37, Ch. 428, L. 1973; R.C.M. 1947, 81-603(part).

77-3-116. Royalty provisions. In every mining lease the board shall reserve to the state a royalty which shall, together with other considerations to be paid by the mining lessee, constitute the full market value as ascertained by the board of the leasehold interest conveyed by the lease. This royalty may not be less than 5% of the returns from or of the full market value of the metalliferous minerals or gems recovered by the lessee from the state lands or reserved mineral rights covered by the lease.

History: En. Sec. 4, Ch. 148, L. 1937; amd. Sec. 2, Ch. 205, L. 1947; amd. Sec. 38, Ch. 428, L. 1973; R.C.M. 1947, 81-604(1).

77-3-117. Modification of lease provisions. The board, by agreement with the permittee or lessee, may, in its discretion and upon such terms as it considers best, amend or modify the terms and conditions within the limitations of this part or extend the term of any lease or prospecting permit issued under this part, subject to the limitations contained in 77-3-102(1) and (2).

History: En. Sec. 3, Ch. 148, L. 1937; amd. Sec. 1, Ch. 205, L. 1947; amd. Sec. 37, Ch. 428, L. 1973; R.C.M. 1947, 81-603(part).

77-3-118. Restrictions on removal of minerals and gems during preliminary prospecting period. No mining lessee may, during any preliminary prospecting period contained in any lease, remove any metalliferous minerals or gems from the leased premises, except as are necessary for the proper testing and sampling of the lands or mineral rights, and except as are permitted by the board.

History: En. Sec. 3, Ch. 148, L. 1937; amd. Sec. 1, Ch. 205, L. 1947; amd. Sec. 37, Ch. 428, L. 1973; R.C.M. 1947, 81-603(part).

77-3-119. Bonds to state. The board may, at the time of the execution and delivery of a mining lease or at any time during the life of the lease, require a mining lessee to file with the department, for the benefit of the state, a bond or bonds conditioned to protect the rights of the state, particularly in the payment to the proper officer of the state of the royalties reserved in the mining lease. The bond or bonds shall be in a form and amount prescribed by the board. The board may at any time require new or additional bonds if in its discretion the interests of the state are not adequately protected by the bond or bonds previously filed.

History: En. Sec. 7, Ch. 148, L. 1937; amd. Sec. 41, Ch. 428, L. 1973; R.C.M. 1947, 81-607.

77-3-120. Bonds to protect prior purchasers, lessees, or contractees. (1) If the lands at the time of the issuance of a mining lease have been sold, are under contract of sale, or have been leased for agricultural, grazing, or other purposes, the board shall provide against the infringement of the rights of the prior purchaser, contractee, or lessee and among other things may at any time require the mining lessee to file with the department a corporate surety bond in a reasonable amount fixed by the board, conditioned to protect the rights of the prior purchaser, contractee, or lessee.

(2) The form of the bond shall be prescribed by the board, and the bond shall run to the state for the benefit of the prior purchaser, contractee, or lessee. New or additional bonds may be required by the board at any time.

(3) Suit may be brought upon the bond by any such prior purchaser, contractee, or lessee for alleged violation of the terms of the bond by the mining lessee. Such suit shall be brought by the claimant in the name of the state for the use and benefit of the claimant, and any recovery upon the bond shall be paid to the claimant.

History: En. Sec. 8, Ch. 148, L. 1937; amd. Sec. 42, Ch. 428, L. 1973; R.C.M. 1947, 81-608.

77-3-121. Pooling agreements and unit plans of operation. (1) The board may enter into agreements for the pooling of acreage or yardage with others holding the mineral rights in adjoining lands for unit operation of placer mining and the apportionment of royalties on a cubic yardage or area basis in the case of placer mining deposits lying partly on land in which the state holds the mining rights and partly on land in which others hold the mining rights.

(2) From each cleanup of values under such unit operations in which any yardage or area mined on lands to which the state holds the mineral rights is included, the state is entitled to royalties computed on that proportion of the whole value of recoveries from the cleanup as the yardage or area mined

from lands included in the agreement in which the state holds the mining rights bears to the total yardage or area mined and included in the cleanup.

(3) The board may also enter into agreements for the unit operation of such placer mining deposits and the apportionment of royalties upon any other equitable basis the board considers in the best interest of the state. The agreements may not change the percentage of royalties to be paid to the state under the unit operations from the percentage fixed in the lease or to a smaller percentage than the 5% minimum under 77-3-116.

History: **En. Sec. 4, Ch. 148, L. 1937; amd. Sec. 2, Ch. 205, L. 1947; amd. Sec. 38, Ch. 428, L. 1973; R.C.M. 1947, 81-604(2).**

77-3-122. Sales, contracts for sale, and other leases subject to mining leases. Any sale of state lands, any contract for the sale of state lands, and any lease of state lands made or issued by said board during the life of any mining lease issued under the provisions of this part shall be subject to such mining lease during the life thereof, and no bond shall be required of such mining lessee for the protection of any such purchaser, contractee, or other lessee unless provision therefor shall be made in such mining lease.

History: **En. Sec. 9, Ch. 148, L. 1937; R.C.M. 1947, 81-609.**

77-3-123. Failure of title. In issuing mining leases, the board and the state have leased only such right, title, and interest as the state has in the lands, metalliferous minerals, or gems therein contained. Neither the state, the board, nor any representative, agent, or employee of the state or the board are under any liability for the failure of the title of the state, in whole or in part, to the lands, metalliferous minerals, or gems covered by the lease.

History: **En. Sec. 12, Ch. 148, L. 1937; amd. Sec. 44, Ch. 428, L. 1973; R.C.M. 1947, 81-612.**

77-3-124 through 77-3-130 reserved.

77-3-131. Limitations on prospecting permits. A permit shall be limited to prospecting for metalliferous minerals or gems and no permittee may remove from any lands or mineral rights covered by the permit any metalliferous minerals or gems except such as are necessary for the proper testing and sampling of the lands or mineral rights and except as are permitted by the board.

History: **En. Sec. 15, Ch. 148, L. 1937; amd. Sec. 9, Ch. 22, L. 1971; Sec. 81-615, R.C.M. 1947; redes. 81-601.1 and amd. by Sec. 47, Ch. 428, L. 1973; R.C.M. 1947, 81-601.1(part).**

77-3-132. Leasing privileges of permittee. (1) During the life of any permit the permittee may apply for a lease of the lands or mineral rights covered by the permit, and if a lease is granted it shall be in the form and subject to all the terms and conditions specified in this part, as in the case of a mining lease issued under this part. The permittee has the preference right to a lease, upon such terms as the board considers just, subject to this part, and in any event the permittee has preference without competitive bidding and upon the most favorable terms permitted under this part to 40 contiguous acres.

(2) If some other person makes a better bid for a mining lease upon the land covered by the permit and if the board awards a mining lease to a better bidder, the board shall also require such mining lessee to pay to the permittee, prior to the issuance of the lease, the full value of all the work the

permittee has performed upon the land under his permit in connection with his prospecting and exploration work. Within 30 days from the date the board gives the permittee notice of the issuance of the mining lease or within such further time as the board upon good cause shown allows, the permittee may remove from the land any machinery, equipment, improvements, and other property placed thereon by him.

History: En. Sec. 15, Ch. 148, L. 1937; amd. Sec. 9, Ch. 22, L. 1971; Sec. 81-615, R.C.M. 1947; redes. 81-601.1 and amd. by Sec. 47, Ch. 428, L. 1973; R.C.M. 1947, 81-601.1(part).

Part 2

Nonmetallic Minerals, Excluding Coal, Oil, and Gas

77-3-201. Nonmetallic mineral leases authorized. When there are found upon state lands deposits of stone, limestone, oil shale, clay, bentonite, calcite, talc, mica, ceramic, asbestos, marble, diatomite, gravel or sand, or phosphate, sodium, potash, sulphur, fluorite or barite, or any other nonmetallic minerals, but not including coal, oil, or gas, valuable for building, mining, or other commercial purposes, the board may in its discretion issue permits or leases to private persons for the removal and disposition of the above-named deposits upon such terms and conditions as the board may determine.

History: En. Sec. 52, Ch. 60, L. 1927; re-en. Sec. 1805.52, R.C.M. 1935; amd. Sec. 1, Ch. 194, L. 1945; amd. Sec. 1, Ch. 147, L. 1953; amd. Sec. 1, Ch. 207, L. 1961; amd. Sec. 49, Ch. 428, L. 1973; R.C.M. 1947, 81-701(part).

77-3-202. Fee. The fee for issuing the lease is the same as for an oil and gas lease.

History: En. Sec. 52, Ch. 60, L. 1927; re-en. Sec. 1805.52, R.C.M. 1935; amd. Sec. 1, Ch. 194, L. 1945; amd. Sec. 1, Ch. 147, L. 1953; amd. Sec. 1, Ch. 207, L. 1961; amd. Sec. 49, Ch. 428, L. 1973; R.C.M. 1947, 81-701(part).

77-3-203. Duration of lease. No such lease shall be made for a longer term than 10 years.

History: En. Sec. 52, Ch. 60, L. 1927; re-en. Sec. 1805.52, R.C.M. 1935; amd. Sec. 1, Ch. 194, L. 1945; amd. Sec. 1, Ch. 147, L. 1953; amd. Sec. 1, Ch. 207, L. 1961; amd. Sec. 49, Ch. 428, L. 1973; R.C.M. 1947, 81-701(part).

77-3-204. Royalty provisions. (1) All such leases shall be upon a royalty basis calculated upon a gross value by weight or cubic measurement as is most favorable for the particular substance being mined or extracted from the lands. The gross value shall be determined at the mine or site of operation, and the rates shall be the same that ordinarily would be charged by private owners under similar circumstances or as in the determination of the board is fair and reasonable.

(2) The board may demand a cash deposit to guarantee the payment of the royalties, a surety bond, or both a cash deposit and bond, as the board may determine.

History: En. Sec. 52, Ch. 60, L. 1927; re-en. Sec. 1805.52, R.C.M. 1935; amd. Sec. 1, Ch. 194, L. 1945; amd. Sec. 1, Ch. 147, L. 1953; amd. Sec. 1, Ch. 207, L. 1961; amd. Sec. 49, Ch. 428, L. 1973; R.C.M. 1947, 81-701(part).

77-3-205. Report of lessee and payment of royalty. (1) On or before the last day of each month, every holder of a producing lease under this part shall make a report to the department on a form the department prescribes showing:

(a) the amount of substances mined or extracted from the lands in the preceding month;

(b) the price obtained;

(c) the total amount of sales; and

(d) any additional information required.

(2) The report shall be verified by affidavit of the lessee or some responsible person having knowledge of the facts and shall be accompanied by payment of the amount to the state as royalty for the month covered by the report.

History: En. Sec. 53, Ch. 60, L. 1927; re-en. Sec. 1805.53, R.C.M. 1935; amd. Sec. 2, Ch. 194, L. 1945; amd. Sec. 50, Ch. 428, L. 1973; R.C.M. 1947, 81-702(part).

77-3-206. Disposition of royalties, fees, and penalties. The royalties, fees, and penalties received under these leases shall be credited to the various funds to which they properly belong in the same manner as is now provided for crediting the same under oil and gas leases.

History: En. Sec. 53, Ch. 60, L. 1927; re-en. Sec. 1805.53, R.C.M. 1935; amd. Sec. 2, Ch. 194, L. 1945; amd. Sec. 50, Ch. 428, L. 1973; R.C.M. 1947, 81-702(part).

77-3-207. Land leased for other purposes. Such portions of the section or other subdivision of the land on which such deposits are located as are not needed for the quarrying or digging and removal of the stone, limestone, oil shale, clay, sand, or gravel may be leased for grazing or agricultural purposes the same as other state lands. In the case that grazing or agricultural leases are issued they shall provide for a right-of-way across the land for the removal of the stone, limestone, oil shale, clay, gravel, sand, or other deposits, but the rights of the lessee shall also be duly protected.

History: En. Sec. 54, Ch. 60, L. 1927; re-en. Sec. 1805.54, R.C.M. 1935; R.C.M. 1947, 81-703.

77-3-208. Stone, gravel, and sand permits for public use. (1) The board may in its discretion issue permits upon such terms and conditions it determines to the department of highways, the board of county commissioners of any county of the state, or to the governing body of a city or town and of any other political subdivision of the state granting them the right to take, remove, and use stone, gravel, or sand from any state lands that have not been sold under certificate of purchase or otherwise for the construction, maintenance, and improvement of public roads, highways, bridges, streets, or alleys.

(2) The rights of lessees to the lands on which such stone, gravel, or sand may be located shall be properly safeguarded under the terms of the permits.

History: En. Sec. 55, Ch. 60, L. 1927; re-en. Sec. 1805.55, R.C.M. 1935; amd. Sec. 51, Ch. 428, L. 1973; R.C.M. 1947, 81-704.

Part 3

Coal

77-3-301. Coal leases authorized. The board may lease in such manner as it considers in the best interests of the state any state lands to which the title is vested in the state and in which the coal or coal rights are not reserved by the United States for exploring for, mining, removing, selling, and disposing of the coal therein, upon the terms and conditions herein stated and subject to such rules as the board prescribes.

History: En. Sec, 38, Ch. 60, L. 1927; re-en. Sec. 1805.38, R.C.M. 1935; amd. Sec. 30, Ch. 428, L. 1973; amd. Sec. 1, Ch. 358, L. 1975; R.C.M. 1947, 81-501(part).

77-3-302. Lands subject to coal leasing. The authority to lease extends to state lands no matter how acquired and extends to state lands which have been sold but in which the coal rights are reserved by the state, whether the lands are under certificate of purchase or patents have been issued.

History: En. Sec, 38, Ch. 60, L. 1927; re-en. Sec. 1805.38, R.C.M. 1935; amd. Sec. 30, Ch. 428, L. 1973; amd. Sec. 1, Ch. 358, L. 1975; R.C.M. 1947, 81-501(part).

77-3-303. Rules relating to coal leasing. The board shall have the power and authority to prescribe such additional rules and to do and perform all acts and things not inconsistent with The Enabling Act, the constitution, and the statutes of this state as it may deem necessary and proper relating to the leasing of state land for coal mining purposes.

History: En. Sec. 44, Ch. 60, L. 1927; re-en. Sec. 1805.44, R.C.M. 1935; R.C.M. 1947, 81-507.

77-3-304. Protection of rights of purchasers or prior lessees. Whenever the leased lands are under certificate of purchase or patents have been issued and in all cases where the lands are under lease for grazing, agriculture, or similar purposes, care shall be taken in issuing the coal mining lease to protect the rights of the purchaser or lessee.

History: En. Sec, 38, Ch. 60, L. 1927; re-en. Sec. 1805.38, R.C.M. 1935; amd. Sec. 30, Ch. 428, L. 1973; amd. Sec. 1, Ch. 358, L. 1975; R.C.M. 1947, 81-501(part).

77-3-305. Limitations on leasing. The board shall not issue leases:

(1) to any corporation the majority stock of which is controlled by interests foreign to the United States, except for those interests within countries whose borders are contiguous to the United States; or

(2) if after a determination of the amount, location, and quality of the coal on the lands for lease, the extraction of the coal from such lands by strip-mining methods would adversely affect the methods of recovery of deep minable coal from such operations on such lands in the future.

History: En. 81-511 by Sec. 6, Ch. 358, L. 1975; R.C.M. 1947, 81-511(part).

Compiler's Comments

Purported 1981 Amendment: Section 1, Ch. 538, L. 1981 (SB 367), as introduced, amended 77-3-305. In fact, section 1, as it was finally passed and approved did not amend 77-3-305 but left it exactly as it existed prior to the 1981 legislative session.

77-3-306. Conditions on manner of mining. (1) Every coal lease shall be conditioned upon compliance with Title 82, chapter 4, parts 1 and 2.

(2) These coal leases are subject to the condition that the coal must be mined, handled, and marketed in a manner that will prevent as far as possible all waste of coal and are also subject to the condition that the mining operations shall be carried on in a systematic and orderly manner that will

not make subsequent mining operations more difficult or expensive. A violation of any of these conditions is grounds for the forfeiture of the lease after a hearing before the board.

History: **En. Sec, 38, Ch. 60, L. 1927; re-en. Sec. 1805.38, R.C.M. 1935; amd. Sec. 30, Ch. 428, L. 1973; amd. Sec. 1, Ch. 358, L. 1975; R.C.M. 1947, 81-501(part).**

77-3-307. Improvements of former lessee. (1) When a coal mining lease is applied for on land where mining operations have been carried on by a former lessee and there are surface or underground improvements on the land used at the former operations, disposition shall be made of the improvements satisfactory to the board before a new lease is issued. If the owner of the improvements desires to sell the same to the new lessee, then the new lessee shall pay him the reasonable value thereof as far as they are suitable for the new mining operations. If they fail to agree on the value of such improvements, then such value shall be ascertained and fixed as provided in 77-6-306.

(2) Before a new lease is issued, the applicant shall show to the satisfaction of the board that he has paid the owner for the improvements as agreed on between them or as fixed by the aforesaid officers or officer or that he has tendered payment as so fixed or that the owner desires to remove his improvements.

History: **En. Sec. 43, Ch. 60, L. 1927; re-en. Sec. 1805.43, R.C.M. 1935; amd. Sec. 32, Ch. 428, L. 1973; R.C.M. 1947, 81-506.**

77-3-308 through 77-3-310 reserved.

77-3-311. Form of lease. The board shall prescribe the form of the lease.

History: **En. Sec. 39, Ch. 60, L. 1927; re-en. Sec. 1805.39, R.C.M. 1935; amd. Sec. 5, Ch. 257, L. 1965; amd. Sec. 1, Ch. 121, L. 1967; amd. Sec. 6, Ch. 22, L. 1971; amd. Sec. 1, Ch. 291, L. 1971; amd. Sec. 31, Ch. 428, L. 1973; amd. Sec. 2, Ch. 358, L. 1975; R.C.M. 1947, 81-502(part).**

77-3-312. Leasing procedures. Prior to issuing a coal mining lease, the board shall evaluate the coal and land proposed to be leased for the purpose of determining the fair market value of any coal reserves located on the land, giving opportunity for and consideration to public comments on such evaluation. Leases shall be awarded by a competitive bid system, including a bonus bid for the first year's rental, and no lease shall be awarded at less than fair market value.

History: **En. Sec, 38, Ch. 60, L. 1927; re-en. Sec. 1805.38, R.C.M. 1935; amd. Sec. 30, Ch. 428, L. 1973; amd. Sec. 1, Ch. 358, L. 1975; R.C.M. 1947, 81-501(part).**

77-3-313. Bond requirements. The board shall also demand a surety company bond in such form and amount as it may determine, conditioned for the payment of all royalties due the state and for the carrying on of the mining operations according to the terms of the lease; but a lessee may, in lieu of furnishing a surety company bond, increase the cash deposit hereinbefore provided for to such an amount as will in the judgment of the board make the furnishing of a bond unnecessary.

History: **En. Sec. 42, Ch. 60, L. 1927; re-en. Sec. 1805.42, R.C.M. 1935; R.C.M. 1947, 81-505.**

77-3-314. Duration of lease. (1) Coal mining leases shall be issued for a primary term of 10 years and so long thereafter as coal is produced from such lands in commercial quantities.

(2) A lease not producing coal in commercial quantities at the end of the primary term shall be terminated, unless the leased lands are described in a strip mine permit issued under 82-4-221 or in a mine site location permit under 82-4-122 prior to the end of the primary term, and the lease shall not be terminated so long as said lands are covered and described under valid permit.

(3) For the purpose of this part, "commercial quantities" means that quantity of coal which can be sold at profit in the commercial market.

History: En. Sec. 39, Ch. 60, L. 1927; re-en. Sec. 1805.39, R.C.M. 1935; amd. Sec. 5, Ch. 257, L. 1965; amd. Sec. 1, Ch. 121, L. 1967; amd. Sec. 6, Ch. 22, L. 1971; amd. Sec. 1, Ch. 291, L. 1971; amd. Sec. 31, Ch. 428, L. 1973; amd. Sec. 2, Ch. 358, L. 1975; R.C.M. 1947, 81-502(part).

77-3-315. Repealed. Sec. 2, Ch. 538, L. 1981.

History: En. 81-511 by Sec. 6, Ch. 358, L. 1975; R.C.M. 1947, 81-511(part).

77-3-316. Rental and royalty terms. (1) The compensation of the state under all coal mining leases shall be upon a rental and royalty basis and shall be fixed and determined by the board.

(2) The rental and royalty terms of each lease shall be subject to readjustment to reflect fair market value at the end of its primary term of 10 years and at the end of each 5-year period thereafter if the lease is producing coal in commercial quantities.

(3) The rental shall be on a per acre basis but in no case shall it be less than $2 per acre.

(4) The amount of such royalty shall be based upon the kind, grade, and character of the coal in each particular mine; upon the size, shape, and nature of the coal vein, strata, or body; and upon the shipping and marketing facilities for the product. Consideration shall also be given to every other known factor affecting the value of each particular coal mining lease; but in no case shall the royalty for the coal mined be less than 10% of the f.o.b. mine price of a ton prepared for shipment.

History: (1), (3), (4)En. Sec. 40, Ch. 60, L. 1927; re-en. Sec. 1805.40, R.C.M. 1935; amd. Sec. 3, Ch. 358, L. 1975; Sec. 81-503, R.C.M. 1947; (2)En. Sec. 39, Ch. 60, L. 1927; re-en. Sec. 1805.39, R.C.M. 1935; amd. Sec. 5, Ch. 257, L. 1965; amd. Sec. 1, Ch. 121, L. 1967; amd. Sec. 6, Ch. 22, L. 1971; amd. Sec. 1, Ch. 291, L. 1971; amd. Sec. 31, Ch. 428, L. 1973; amd. Sec. 2, Ch. 358, L. 1975; Sec. 81-502, R.C.M. 1947; R.C.M. 1947, 81-502(part), 81-503.

77-3-317. Report and payment of royalty. (1) On or before the last day of each month every holder of a producing coal mining lease shall make a report to the department on a form the department prescribes showing:

(a) the number of tons mined during the preceding calendar month;
(b) the price obtained therefor at the mine;
(c) the total amount of all sales; and
(d) any additional information required by the department.

(2) The report shall be verified by the oath of the lessee and be accompanied by payment of the royalty due the state for the preceding month as shown by the report.

History: En. Sec. 45, Ch. 60, L. 1927; re-en. Sec. 1805.45, R.C.M. 1935; amd. Sec. 33, Ch. 428, L. 1973; R.C.M. 1947, 81-508.

77-3-318. Disposition of royalties and other receipts. All fees, rentals, royalties, and bonuses collected under state coal leases shall be paid to the department and credited as follows:

(1) All fees shall be credited to the state general fund.

(2) All rentals and bonuses shall be credited to the income fund of the grant to which the lands under each lease belong.

(3) All moneys collected as royalties shall be credited to the permanent fund arising from the grants to which the lands under lease belong.

History: En. Sec. 47, Ch. 60, L. 1927; re-en. Sec. 1805.47, R.C.M. 1935; amd. Sec. 34, Ch. 428, L. 1973; amd. Sec. 5, Ch. 358, L. 1975; R.C.M. 1947, 81-510.

77-3-319 and 77-3-320 reserved.

77-3-321. Coal mining permits for private use and for schools. (1) The board may in its discretion grant to any resident of this state a permit for a term of not more than 1 year to mine coal for the use of himself and his family from any coal deposit belonging to the state and not under lease upon payment to the state of the flat sum of $5 as a royalty for any amount of coal mined by him not exceeding 30 tons of 2,000 pounds.

(2) The board may also grant a similar 1-year permit to the board of trustees of any school district in this state, provided that if such school district requires more than 30 tons of coal per annum, then any additional amount required shall be paid for in advance at the rate of 12 ½ cents per ton.

(3) Applications for such permits shall be accompanied by an affidavit to the effect that the coal is not wanted for sale or disposal to other parties but that it is wanted for the use of the applicant and his family or for the use of the school district, as the case may be.

(4) The granting of such permits shall not prevent the board from issuing the usual coal mining leases on the land from which the coal under such permit is to be taken. In cases of this kind the permittee shall remove the quantity of coal to which he is entitled as expeditiously as possible and his rights under the permit shall then automatically cease upon the issue of the lease.

History: En. Sec. 46, Ch. 60, L. 1927; re-en. Sec. 1805.46, R.C.M. 1935; R.C.M. 1947, 81-509.

Part 4

Oil and Gas

77-3-401. Oil and gas leases authorized. (1) The board is hereby authorized and empowered to lease in such manner as it may determine, not inconsistent with The Enabling Act and the constitution, any state lands to which the title has vested in the state and in which the oil and gas rights are not reserved by the United States, for prospecting and exploring for oil and gas, mining, drilling, developing, and removing the same upon the terms and conditions herein prescribed to any person, association, corporation, domestic or foreign, or municipality qualified under the constitution and the laws of the state.

(2) This power and authority to lease state lands for such purposes shall extend to and include all lands owned by the state under navigable lakes and

streams and shall also extend to and include all those state lands which have been sold but in which the oil and gas rights have been reserved by the state; but in such cases and in all cases where the lands are under lease for grazing, agriculture, or similar purposes, care shall be taken in issuing the oil and gas leases to protect the rights of the purchaser or lessee.

History: En. Sec. 1, Ch. 108, L. 1927; re-en. Sec. 1882.1, R.C.M. 1935; amd. Sec. 1, Ch. 90, L. 1943; amd. Sec. 1, Ch. 261, L. 1947; amd. Sec. 6, Ch. 184, L. 1961; R.C.M. 1947, 81-1701(part).

77-3-402. Rules. (1) The board shall have the power and authority to prescribe such rules and to do and perform all acts and things not inconsistent with The Enabling Act, the constitution, and the statutes of this state as it may deem necessary and proper relating to the leasing of state lands for oil and gas exploration and development. The board shall formulate rules not inconsistent with law governing the leasing of state lands for oil and gas exploration and development which shall be compiled and printed periodically.

(2) Copies of the rules and notices of changes therein shall be made available to any person desiring a copy thereof at a reasonable cost to be fixed by a rule of the board.

History: En. Sec. 7, Ch. 108, L. 1927; re-en. Sec. 1882.7, R.C.M. 1935; amd. Sec. 1, Ch. 144, L. 1961; R.C.M. 1947, 81-1707.

77-3-403. Hearings on questions related to leases. The board is hereby granted full power and authority to order and hold hearings on any matter or question involving oil and gas leases under such rules as it may adopt.

History: En. Sec. 10, Ch. 108, L. 1927; re-en. Sec. 1882.10, R.C.M. 1935; R.C.M. 1947, 81-1710(part).

77-3-404. Limitation on area under single lease. An oil or gas lease issued on state lands may not embrace more than 640 acres, except that any section surveyed by the United States which contains more than 640 acres may be included under one lease.

History: En. Sec. 2, Ch. 108, L. 1927; amd. Sec. 1, Ch. 193, L. 1931; amd. Sec. 1, Ch. 171, L. 1933; re-en. Sec. 1882.2, R.C.M. 1935; amd. Sec. 1, Ch. 109, L. 1941; amd. Sec. 1, Ch. 91, L. 1943; amd. Sec. 1, Ch. 128, L. 1945; amd. Sec. 1, Ch. 122, L. 1953; amd. Sec. 84, Ch. 428, L. 1973; R.C.M. 1947, 81-1702(part).

77-3-405. Leased lands to be generally compact and contiguous. (1) The lands shall be leased in as compact bodies as the form and areas of the tracts held by the state and offered for lease will permit.

(2) No lease may embrace noncontiguous subdivisions of lands unless the subdivisions are within an area comprising not more than 1 square mile.

History: En. Sec. 1, Ch. 161, L. 1955; amd. Sec. 12, Ch. 22, L. 1971; amd. Sec. 85, Ch. 428, L. 1973; amd. Sec. 1, Ch. 136, L. 1974; amd. Sec. 1, Ch. 379, L. 1975; R.C.M. 1947, 81-1702.1(3).

77-3-406. Number of leases which one person may hold. Any person, association, corporation, or municipality qualified to hold an oil or gas lease on state lands may receive from the board or take through assignment or succession, will, judgment, decree, or otherwise through the operation of law more than one oil and gas lease to state lands, subject to such regulations and limitations as the board prescribes.

History: En. Sec. 2, Ch. 108, L. 1927; amd. Sec. 1, Ch. 193, L. 1931; amd. Sec. 1, Ch. 171, L. 1933; re-en. Sec. 1882.2, R.C.M. 1935; amd. Sec. 1, Ch. 109, L. 1941; amd. Sec. 1, Ch. 91, L. 1943;

amd. Sec. 1, Ch. 128, L. 1945; amd. Sec. 1, Ch. 122, L. 1953; amd. Sec. 84, Ch. 428, L. 1973; R.C.M. 1947, 81-1702(part).

77-3-407. New leases on lands leased prior to February 28, 1953. (1) In the case of all leases issued under the provisions in force prior to February 28, 1953, where oil or gas is being produced, the board shall at the expiration thereof or termination for any cause advertise the land held thereunder for re-leasing and lease the same to the highest responsible bidder therefor at public auction on the terms then existing for such leasing. Any person, association, firm, or corporation who held such lease at the expiration thereof shall have the privilege of re-leasing the same at such highest responsible bid offered therefor upon such terms and conditions as may be prescribed by the board or the legislature.

(2) In the case of all leases issued under the provisions in force prior to February 28, 1953, where oil or gas is not being produced, the board may at the expiration thereof or termination for any cause advertise the land held thereunder for re-leasing and lease the same to the highest responsible bidder therefor at public auction if in the judgment of the board such advertising and public auction will result in leasing of the land on terms advantageous to the state.

History: En. Sec. 15, Ch. 108, L. 1927; amd. Sec. 3, Ch. 171, L. 1933; re-en. Sec. 1882.15, R.C.M. 1935; amd. Sec. 1, Ch. 104, L. 1965; R.C.M. 1947, 81-1715.

77-3-408. Certain state officers not to be interested in leases. It is unlawful for any officer or employee of any agency of the executive branch of state government who is required to inspect or examine oil or gas wells or otherwise to gather field information in regard to prospecting for oil and gas or the production thereof to lease or to become interested in any manner in any oil or gas lease on state lands.

History: En. Sec. 20, Ch. 108, L. 1927; amd. Sec. 4, Ch. 171, L. 1933; re-en. Sec. 1882.20, R.C.M. 1935; amd. Sec. 93, Ch. 428, L. 1973; R.C.M. 1947, 81-1720.

77-3-409. Misconduct of officers in relation to oil and gas leases. (1) Any officer, employee, or representative of the state who directly or indirectly accepts any money or any other valuable thing, except his regular and lawful compensation, for performing or not performing an official act under the provisions of this part or for modifying the performance thereof shall be guilty of a felony.

(2) Any officer, employee, or representative of the state who knowingly and willfully makes any false classification or appraisal of any state land or interest of the state therein or of any oil and gas deposits in which the state is interested or who knowingly and willfully makes any false report of any such classification or appraisal shall be guilty of a felony.

History: En. Sec. 21, Ch. 108, L. 1927; re-en. Sec. 1882.21, R.C.M. 1935; R.C.M. 1947, 81-1721.

77-3-410. False statements relating to oil and gas leases. Any person who shall knowingly make and file in any department, bureau, or office of the state any application, statement, or report in writing required by regulation promulgated pursuant to the provisions of this part containing any false statement of a material fact shall be guilty of a felony.

History: En. Sec. 22, Ch. 108, L. 1927; re-en. Sec. 1882.22. R.C.M. 1935; R.C.M. 1947, 81-1722.

77-3-411 through 77-3-420 reserved.

77-3-421. Duration of lease. (1) All state oil and gas leases shall be granted for a primary term or period of 10 years and as long thereafter as oil or gas in paying quantities is produced, on condition that all drilling, rental, and other obligations are fully kept and performed by the lessee.

(2) Oil or gas produced from any part of a unit in which state lands are included by virtue of a pooling agreement are considered to be produced from the state lands therein within the meaning of this part.

History: En. Sec. 2, Ch. 108, L. 1927; amd. Sec. 1, Ch. 193, L. 1931; amd. Sec. 1, Ch. 171, L. 1933; re-en. Sec. 1882.2, R.C.M. 1935; amd. Sec. 1, Ch. 109, L. 1941; amd. Sec. 1, Ch. 91, L. 1943; amd. Sec. 1, Ch. 128, L. 1945; amd. Sec. 1, Ch. 122, L. 1953; amd. Sec. 84, Ch. 428, L. 1973; R.C.M. 1947, 81-1702(part).

77-3-422. Lease extension clause. If oil or gas is not being produced from the leased premises at the expiration of the primary term of the lease but the owner of the lease is then engaged in drilling on the premises for oil or gas, then the lease continues in force so long as such drilling operations are being diligently prosecuted. If oil or gas is recovered from any such well drilled or being drilled at or after the expiration of the primary term of the lease, the lease continues in force so long as oil or gas in paying quantities is produced from the leased premises.

History: En. Sec. 2, Ch. 108, L. 1927; amd. Sec. 1, Ch. 193, L. 1931; amd. Sec. 1, Ch. 171, L. 1933; re-en. Sec. 1882.2, R.C.M. 1935; amd. Sec. 1, Ch. 109, L. 1941; amd. Sec. 1, Ch. 91, L. 1943; amd. Sec. 1, Ch. 128, L. 1945; amd. Sec. 1, Ch. 122, L. 1953; amd. Sec. 84, Ch. 428, L. 1973; R.C.M. 1947, 81-1702(part).

77-3-423. Annual rental. (1) The annual money rentals to be paid to the state for oil and gas leases issued on and after July 1, 1975, shall be set by the board but may not be less than $1.50 for each acre of land leased.

(2) In addition to the sum of $1.50 per acre, the rental for the first year of the lease shall also include any sum in excess of $1.50 per acre offered and accepted for the first year's rental.

(3) This annual rental shall in no case be less than $100 a year.

(4) The first year's rental shall be paid before the issuance of the lease. The rentals for each subsequent year of the lease shall be due and payable before the beginning of such subsequent year, and upon failure to make such payment the lease terminates.

History: En. Sec. 1, Ch. 161, L. 1955; amd. Sec. 12, Ch. 22, L. 1971; amd. Sec. 85, Ch. 428, L. 1973; amd. Sec. 1, Ch. 136, L. 1974; amd. Sec. 1, Ch. 379, L. 1975; R.C.M. 1947, 81-1702.1(1), (2).

77-3-424. Power to terminate lease in absence of commencement of drilling or payment of delay drilling penalty. (1) In every oil and gas lease granted after March 3, 1955, under this part there shall be reserved to the board full power to declare termination of the lease at the end of the fifth year or any subsequent year of the primary term of the lease upon failure of the lessee to either:

(a) commence the drilling of a well for oil and gas upon the leased premises; or

(b) pay a delay drilling penalty as follows:

(i) for the sixth year of the lease $1.25 per acre per year; and

(ii) for the remainder of the primary term of the lease an amount per acre per year as the board may in its discretion determine.

(2) Notice of that determination shall be given to the lessee, and if the lessee applies for a hearing thereon within 10 days after receipt of the notice, the determination shall become final only after such hearing has been held.

(3) This annual delay drilling penalty shall be paid each year in advance.

(4) If a well for oil and gas is commenced, the drilling of the well shall be prosecuted with due diligence and dispatch to such depth as is necessary to make a reasonable test for oil or gas.

History: En. Sec. 2, Ch. 161, L. 1955; amd. Sec. 1, Ch. 251, L. 1965; amd. Sec. 86, Ch. 428, L. 1973; R.C.M. 1947, 81-1702.2(part); amd. Sec. 9, Ch. 15, L. 1979.

77-3-425. Dry hole clause. If the first well drilled is a dry hole and if a second well is not commenced on the land covered by the lease before the next anniversary of the lease following the completion of the well, the lease may be terminated by the board unless the lessee, on or before such anniversary, resumes the payments of penalties in the amounts provided in 77-3-424. Upon the resumption of the payment of such delay drilling penalties and their continued payment, the lease continues in force during the primary term as though there had been no interruption in the delay drilling penalty payments.

History: En. Sec. 2, Ch. 161, L. 1955; amd. Sec. 1, Ch. 251, L. 1965; amd. Sec. 86, Ch. 428, L. 1973; R.C.M. 1947, 81-1702.2(part).

77-3-426. Lessee to prevent waste. Oil and gas leases issued under the provisions of this part shall all be subject to the conditions that the lessee in conducting his explorations and mining or drilling operations shall use all reasonable precautions to prevent waste of oil or gas developed in the land or the entrance of water through wells drilled by him to the oil or gas sands or oil or gas bearing strata to the destruction or injury of the oil or gas deposits. Violations of any of these conditions shall constitute grounds for the forfeiture of the lease after hearing had thereon before the board.

History: En. Sec. 1, Ch. 108, L. 1927; re-en. Sec. 1882.1, R.C.M. 1935; amd. Sec. 1, Ch. 90, L. 1943; amd. Sec. 1, Ch. 261, L. 1947; amd. Sec. 6, Ch. 184, L. 1961; R.C.M. 1947, 81-1701(part).

77-3-427. Provision for offset wells — compensatory royalties. (1) Oil and gas leases granted by the state shall contain suitable provisions imposing upon all lessees the obligation to drill offset wells wherever and whenever necessary to prevent waste and damage to the property of the state.

(2) The board may allow the lessee the option of paying a compensatory royalty on a nonproducing lease in lieu of drilling an offset well if it determines that such compensatory royalty will fully compensate the state for waste and damage to the property of the state. The compensatory royalty shall be based upon the estimated drainage, as determined by the board, and shall be paid on a monthly basis unless circumstances require otherwise.

History: En. Sec. 19, Ch. 108, L. 1927; re-en. Sec. 1882.19, R.C.M. 1935; R.C.M. 1947, 81-1719(part); amd. Sec. 1, Ch. 81, L. 1981.

Compiler's Comments

1981 Amendment: Added subsection (2) relating to option of allowing compensatory royalties.

77-3-428. Additional development following completion of productive well. (1) The lessee shall be required, upon completing a commercially productive oil or gas well upon the leased premises, to proceed with reasonable diligence to drill such additional wells to the depth of the formation found commercially productive or to such depth as may be necessary to economically test, develop, and operate the deposits discovered.

(2) No lessee shall, however, be required to drill to completion more than one well under any one lease during any one calendar year or a total number of wells under any one lease in excess of the total number of 40-acre subdivisions of land held under such lease. As to lands found valuable for gas production only, the drilling obligation of the lessee shall be confined to a total number of wells equal to the total number of tracts comprising 160 acres of land included in the lease, except as the drilling of offset oil or gas wells necessary to protect the leased premises and deposits from loss or depletion due to wells drilled on contiguous lands shall require greater diligence in drilling and a greater number of wells to be drilled.

(3) The performance of said well drilling operations may be suspended only by and with the consent of the board during the time oil or gas previously discovered cannot be marketed at a profit or for other good cause shown.

History: En. Sec. 11, Ch. 108, L. 1927; re-en. Sec. 1882.11, R.C.M. 1935; R.C.M. 1947, 81-1711.

77-3-429. Operating agreements. Owners of state oil and gas leases may enter into agreements with other persons, associations, firms, and corporations for drilling and other operations on the state lands under their leases. No such operating agreements are in any way binding upon the state until filed with the board and approved by it. No such drilling or operating agreement in any way affects the obligations of each individual leaseholder to the state.

History: En. Sec. 2, Ch. 108, L. 1927; amd. Sec. 1, Ch. 193, L. 1931; amd. Sec. 1, Ch. 171, L. 1933; re-en. Sec. 1882.2, R.C.M. 1935; amd. Sec. 1, Ch. 109, L. 1941; amd. Sec. 1, Ch. 91, L. 1943; amd. Sec. 1, Ch. 128, L. 1945; amd. Sec. 1, Ch. 122, L. 1953; amd. Sec. 84, Ch. 428, L. 1973; R.C.M. 1947, 81-1702(3).

77-3-430. Pooling agreements and unit operations. Nothing contained in this or in prior related laws prevents the board from entering into agreements for the pooling of acreage with others for unit operations for the production of oil or gas or both and the apportionment of oil or gas royalties or both on an acreage or other equitable basis and from modifying leases with respect to delay rentals, delay drilling penalties, and royalties in accordance with such pooling agreements and such unit plans of operation. However, such agreements may not change the percentage of royalties to be paid to the state from the percentages as fixed in its leases. The board may modify existing pooling and unit agreements so as to commit the state lands included therein for as long as the unitized substance or substances for which the state lands are committed is produced from any lands in the unit.

History: En. Sec. 2, Ch. 108, L. 1927; amd. Sec. 1, Ch. 193, L. 1931; amd. Sec. 1, Ch. 171, L. 1933; re-en. Sec. 1882.2, R.C.M. 1935; amd. Sec. 1, Ch. 109, L. 1941; amd. Sec. 1, Ch. 91, L. 1943; amd. Sec. 1, Ch. 128, L. 1945; amd. Sec. 1, Ch. 122, L. 1953; amd. Sec. 84, Ch. 428, L. 1973; R.C.M. 1947, 81-1702(4).

77-3-431. Report of lessees. (1) On or before the last day of each month every holder of a producing oil or gas lease shall make a report to the department for the preceding calendar month on a form the department prescribes. The report shall show the amount of oil or gas produced and saved during the preceding month, the price obtained, the total amount of all sales, and any additional information as may be required, and it shall be signed by the lessee or some responsible person having knowledge thereof.

(2) Oil and gas leases granted by the state shall contain suitable provisions imposing upon all lessees the obligation to make such report of operation, production, and sales in the manner, at the time, and to such representative of the state as may be required by the board.

History: (1)En. Sec. 5, Ch. 108, L. 1927; re-en. Sec. 1882.5, R.C.M. 1935; amd. Sec. 2, Ch. 122, L. 1953; amd. Sec. 1, Ch. 171, L. 1963; amd. Sec. 87, Ch. 428, L. 1973; Sec. 81-1705, R.C.M. 1947; (2)En. Sec. 19, Ch. 108, L. 1927; re-en. Sec. 1882.19, R.C.M. 1935; Sec. 81-1719, R.C.M. 1947; R.C.M. 1947, 81-1705(part), 81-1719(part).

77-3-432. Royalty. In every oil and gas lease granted by the state under this part and acts amendatory thereto, there shall be reserved to the state as consideration therefor, in addition to the rentals as hereinbefore provided, a royalty in all oil and gas produced and saved from all lands covered thereby and not used for light, fuel, and operation purposes on the leased premises, which shall be equivalent to the full market value, as ascertained by the board at the date of such lease, of the estate or interest of the state in the lands and oil and gas deposits disposed of under such lease. Such royalty reservation shall be set by the board but may not be less than 12 ½% on gas and not less than 12 ½% on that portion of the average production of oil or casinghead gasoline for each producing well not exceeding 3,000 barrels for the calendar month.

History: En. Sec. 4, Ch. 108, L. 1927; re-en. Sec. 1882.4, R.C.M. 1935; amd. Sec. 1, Ch. 61, L. 1951; amd. Sec. 1, Ch. 103, L. 1965; amd. Sec. 2, Ch. 379, L. 1975; R.C.M. 1947, 81-1704(part).

77-3-433. Shut-in gas royalty. The royalty on gas, including casinghead gas and all gaseous substances, while the same is not sold or used off the premises, shall be at the rate of $400 per well each year or the amount of the annual rental provided in said lease in lieu of such per well rate, whichever is the greater, payable on or before the annual anniversary date of the lease. As long as such leased lands contain a well capable of such production and such payment is made, the lease shall be considered as a producing lease under the lease terms.

History: En. Sec. 4, Ch. 108, L. 1927; re-en. Sec. 1882.4, R.C.M. 1935; amd. Sec. 1, Ch. 61, L. 1951; amd. Sec. 1, Ch. 103, L. 1965; amd. Sec. 2, Ch. 379, L. 1975; R.C.M. 1947, 81-1704(part).

77-3-434. Manner of making royalty payment. Such lease shall provide for the rendering of payment of such royalty on all oil and gas produced and saved and sold or used off the premises in the following manner and upon the following terms:

(1) the lessee shall pay to the state in cash, for all oil and gas royalty reserved, the posted field price existing on the day such oil or gas is run into any pipeline or storage tank to the credit of the lessee, plus any bonus actually paid or agreed to be paid to the lessee for such oil or gas; or

(2) at the option of the state exercised in writing by the board not oftener than every 30 days, the lessee shall deliver the state's royalty oil or gas free

of cost or deductions into the pipeline to which the wells of the lessee may be connected or into any storage designated by the state and connected with such wells.

History: **En. Sec. 4, Ch. 108, L. 1927; re-en. Sec. 1882.4, R.C.M. 1935; amd. Sec. 1, Ch. 61, L. 1951; amd. Sec. 1, Ch. 103, L. 1965; amd. Sec. 2, Ch. 379, L. 1975; R.C.M. 1947, 81-1704(part).**

77-3-435. Payments due to state. (1) The report under 77-3-431 shall be accompanied by payment of the amount due the state as royalty for the month covered by the report unless the state's royalty is being or has been paid direct by the purchaser thereof. However, where the amount of royalty due from any lease is determined by the board to be so small as to make it uneconomical to collect monthly, the board may authorize royalty payments to be made semiannually.

(2) Oil and gas leases granted by the state shall contain suitable provisions imposing upon all lessees the obligation to make payments due the state in the manner, at the time, and to such representative of the state as may be required by the board.

History: **(1)En. Sec. 5, Ch. 108, L. 1927; re-en. Sec. 1882.5, R.C.M. 1935; amd. Sec. 2, Ch. 122, L. 1953; amd. Sec. 1, Ch. 171, L. 1963; amd. Sec. 87, Ch. 428, L. 1973; Sec. 81-1705, R.C.M.; (2)En. Sec. 19, Ch. 108, L. 1927; re-en. Sec. 1882.19, R.C.M. 1935; Sec. 81-1719, R.C.M. 1947; R.C.M. 1947, 81-1705(part), 81-1719(part).**

77-3-436. Disposition of royalties and other money. All fees, rentals, penalties, royalties, and bonuses collected for or under state oil and gas leases shall be paid to the department and credited as follows:

(1) All fees and penalties shall be credited to the state general fund.

(2) All rentals shall be credited to the income fund of the grant to which the lands under each lease belong.

(3) All moneys collected as royalties and bonuses shall be credited to the permanent fund arising from the grant to which the land under each particular lease belongs and become and forever remain an inseparable and inviolable part thereof. However, all royalties and bonuses collected from the lands forming part of the capitol building grant shall be available as income, the same as all other receipts from such lands.

(4) All moneys received as rentals, royalties, and bonuses for or under leases on state lands and not held in trust for the public schools of the state or for any state institution shall be credited one-half to the state general fund and one-half to the state permanent revenue fund.

History: **En. Sec. 12, Ch. 108, L. 1927; re-en. Sec. 1882.12, R.C.M. 1935; amd. Sec. 44, Ch. 100, L. 1973; amd. Sec. 89, Ch. 428, L. 1973; R.C.M. 1947, 81-1712.**

77-3-437. Amendment of existing leases. The owner or owners of any existing state oil and gas lease shall have the right to exchange it for an amended lease containing the same provisions as to the term of said lease as are then provided by law for state oil and gas leases upon filing a written application therefor and upon payment of a sum which is the full market value of the exchange, as determined by the board. The amended lease shall be subject to all other provisions, including rents and royalties, contained in the original lease and shall bear the same commencement date as the original lease.

History: **En. Sec. 8, Ch. 108, L. 1927; re-en. Sec. 1882.8, R.C.M. 1935; amd. Sec. 3, Ch. 122, L. 1953; R.C.M. 1947, 81-1708.**

77-3-438. Assignments of leases. (1) The assignment of any oil and gas lease issued under this part, either in whole or as to subdivisions of land embracing not less than 40 acres covered thereby, made to an assignee qualified as provided herein is permitted. Such assignment is not, however, binding upon the state until filed with the department and accompanied by the required fees, together with such proof of qualifications required by the board, and approved by the board or its lawful representative. The approval of any assignment so filed and supported may not be withheld in any case where the rights or interest of the state in the property assigned will not in the judgment of the board be prejudiced thereby, and the decision of the board in all cases is subject to appeal upon proper court proceedings.

(2) All other assignments of oil and gas leases issued under this part or interests therein are subject to approval by the board and are binding upon the state in the discretion of the board.

History: En. Sec. 16, Ch. 108, L. 1927; re-en. Sec. 1882.16, R.C.M. 1935; amd. Sec. 90, Ch. 428, L. 1973; R.C.M. 1947, 81-1716.

77-3-439. Surrender of leases. The lessee under any oil and gas lease granted by the state may at the termination of any rental year, by giving to the department 30 days' previous notice in writing, surrender and relinquish the lease to the state in whole or as to any legal subdivision of the lands covered thereby and be discharged from any obligation not yet accrued as to lands so surrendered and relinquished without prejudice to the continuance of the lease as to lands not surrendered or relinquished.

History: En. Sec. 18, Ch. 108, L. 1927; re-en. Sec. 1882.18, R.C.M. 1935; amd. Sec. 92, Ch. 428, L. 1973; R.C.M. 1947, 81-1718.

77-3-440. Forfeiture and cancellation of leases. (1) All oil and gas leases granted by the state pursuant to the terms of this part shall provide for forfeiture and cancellation thereof upon failure of the lessee to fully discharge the obligations provided therein, after written notice from the state and reasonable time allowed to the lessee for performance of any undertaking or obligation specified in such notice concerning which the lessee is in default.

(2) Any lessee, upon application therefor, shall be granted a hearing on any notice or demand of the board before any lease is declared forfeited or canceled by the board.

History: En. Sec. 10, Ch. 108, L. 1927; re-en. Sec. 1882.10, R.C.M. 1935; R.C.M. 1947, 81-1710(part).

77-3-441. Restriction on new lease following termination of old lease. In all cases where an oil and gas lease issued after March 3, 1955, is surrendered for cancellation before its expiration, relinquished to the state, or canceled through proceedings on the part of the state, no new lease on the lands under such lease may be issued within 30 days from the date of cancellation or relinquishing. This restriction does not apply, however, in cases of bona fide assignment.

History: En. Sec. 1, Ch. 161, L. 1955; amd. Sec. 12, Ch. 22, L. 1971; amd. Sec. 85, Ch. 428, L. 1973; amd. Sec. 1, Ch. 136, L. 1974; amd. Sec. 1, Ch. 379, L. 1975; R.C.M. 1947, 81-1702.1(4).

77-3-442. Disposition of property of lessee upon termination of lease. (1) Upon the termination for any cause of any lease issued under this part, the former lessee has 6 months after the date of the termination to remove all machinery, fixtures, improvements, buildings, and equipment belonging to him on the premises, except for casing in the wells and other equipment or apparatus necessary for the preservation of any oil or gas well or wells. As to such casing, equipment, and apparatus, any succeeding lessee or, in the event there is no succeeding lessee, the state wishing to have such property left upon the premises shall pay the reasonable value thereof to the former lessee.

(2) If the succeeding lessee or the board is unable to agree with the former lessee upon the reasonable cash value of such casing, equipment, and apparatus, the succeeding lessee or the state, as the case may be, shall pay in cash to the former lessee a sum fixed as a reasonable price by a board of three appraisers, one of whom shall be chosen by the successful bidder, one by the former lessee, and the third by the two so chosen. Its appraisal shall be reported to the respective parties in writing and is final and conclusive.

(3) The former lessee may remain in possession and manage the land and property formerly covered by his lease until the value of the casing, equipment, and apparatus which the succeeding lessee or the state desires to have left upon the premises is fixed in the manner provided in this section and has been paid to him in cash. During the time the former lessee remains in such possession, he may retain the same share of the products of the premises as inured to him during the term of his lease. Should the state or other bidder not desire any of the lessee's property as provided in this section, the lessee shall properly plug all wells and remove all of his property from the lands.

History: En. Sec. 17, Ch. 108, L. 1927; re-en. Sec. 1882.17, R.C.M. 1935; amd. Sec. 91, Ch. 428, L. 1973; R.C.M. 1947, 81-1717.

77-3-443. Reservation in lease for disposition of surface. In every oil and gas lease granted pursuant to the terms hereof there shall be reserved unto the state the right to sell, lease, or otherwise dispose of the surface of the lands covered thereby, subject always to the rights and privileges granted unto the lessee under such oil and gas lease.

History: En. Sec. 1, Ch. 108, L. 1927; re-en. Sec. 1882.1, R.C.M. 1935; amd. Sec. 1, Ch. 90, L. 1943; amd. Sec. 1, Ch. 261, L. 1947; amd. Sec. 6, Ch. 184, L. 1961; R.C.M. 1947, 81-1701(part).

Part 5

Underground Storage of Natural Gas

77-3-501. Lease for underground storage of natural gas authorized. (1) The board is hereby authorized and empowered to lease in such manner and upon such terms as it may determine, not inconsistent with The Enabling Act and the constitution, state lands to which the title has vested in the state, subject to existing rights, for use for the underground storage of natural gas upon the terms and conditions herein prescribed, to any natural gas public utility authorized to do business in this state and engaged in the business of transporting or distributing natural gas by means of pipelines into, within, or through this state for ultimate public use.

(2) State lands which may be leased shall include lands in which the deposit of native gas shall have been depleted, provided the lessee pays to the state the amount specified by the board for the native gas then remaining in the lands to be leased.

History: En. Sec. 1, Ch. 213, L. 1955; R.C.M. 1947, 81-1725(1).

77-3-502. Rules. The board shall have the power and authority to prescribe such rules and to do and perform all acts and things not inconsistent with The Enabling Act, the constitution, and the statutes of this state as it may deem necessary and proper relating to the leasing of state lands for the underground storage of natural gas and the sale of the gas remaining in state lands in a gas field wherein native gas deposits have been depleted.

History: En. Sec. 3, Ch. 213, L. 1955; R.C.M. 1947, 81-1727.

77-3-503. Hearings on questions related to leases. The board may order and hold hearings on any matter or question involving leases issued under 77-3-501 under such rules as it adopts.

History: En. Sec. 5, Ch. 213, L. 1955; amd. Sec. 96, Ch. 428, L. 1973; R.C.M. 1947, 81-1729(part).

77-3-504. Lessee's right to hearing. Any lessee, upon application, is entitled to a hearing on any notice or demand of the department before any lease is granted, forfeited, or canceled by the board.

History: En. Sec. 5, Ch. 213, L. 1955; amd. Sec. 96, Ch. 428, L. 1973; R.C.M. 1947, 81-1729(part).

77-3-505. Bond of lessees. A lessee under 77-3-501 shall furnish bond to the state in a form prescribed by the board and in an amount adequate to indemnify the state against loss, damage, or detriment by reason of failure of the lessee to fully discharge the obligations contained in any lease. No bond in excess of $20,000 is required under any one lease.

History: En. Sec. 4, Ch. 213, L. 1955; amd. Sec. 95, Ch. 428, L. 1973; R.C.M. 1947, 81-1728.

77-3-506. Disposition of leased land. In every lease granted pursuant to the terms hereof there shall be reserved unto the state the right to sell, lease, or otherwise dispose of the lands covered thereby, subject always to the rights and privileges granted unto the lessee under a lease provided for by this part.

History: En. Sec. 1, Ch. 213, L. 1955; R.C.M. 1947, 81-1725(2).

77-3-507. Lessee to prevent waste. (1) Leases issued under the provisions of this part shall all be subject to the conditions that the lessee in conducting the underground storage of natural gas shall use all reasonable precautions to prevent waste of oil or gas developed in the land or the entrance of water through wells drilled to store natural gas to the oil or gas sands or oil or gas bearing strata to the destruction or injury of oil or gas deposits.

(2) Violations of any of these conditions shall constitute grounds for the forfeiture of the lease after hearing had thereon before the board.

History: En. Sec. 1, Ch. 213, L. 1955; R.C.M. 1947, 81-1725(3).

77-3-508. Duration of lease. All leases issued under 77-3-501 may be granted for a period not exceeding 20 years, and the lessee has a preferential right to renew the lease for an additional period not exceeding 20 years, subject to any terms and conditions the board imposes.

History: En. Sec. 2, Ch. 213, L. 1955; amd. Sec. 94, Ch. 428, L. 1973; R.C.M. 1947, 81-1726.

77-3-509. Disposition of funds. All rentals collected for or under leases issued under 77-3-501 shall be paid to the department and credited in the same manner as rentals from oil and gas leases.

History: En. Sec. 6, Ch. 213, L. 1955; amd. Sec. 97, Ch. 428, L. 1973; R.C.M. 1947, 81-1730.

77-3-510. Cancellation and forfeiture of lease. All leases granted under 77-3-501 shall provide for their forfeiture and cancellation upon failure of the lessee to fully discharge the obligations provided therein, after written notice from the department and reasonable time allowed to the lessee for performance of any undertaking or obligation specified in such notice concerning which the lessee is in default.

History: En. Sec. 5, Ch. 213, L. 1955; amd. Sec. 96, Ch. 428, L. 1973; R.C.M. 1947, 81-1729(part).

77-3-511. Termination and surrender of lease. The lessee may at the termination of any rental year, by giving to the department 30 days' previous notice in writing, surrender and relinquish such lease to the state and be thereupon discharged from any obligation not yet accrued.

History: En. Sec. 7, Ch. 213, L. 1955; amd. Sec. 98, Ch. 428, L. 1973; R.C.M. 1947, 81-1731(1).

77-3-512. Disposition of lessee's property upon termination of lease. Upon the termination for any cause of any lease issued under 77-3-501, the lessee has 6 months after the date of the termination within which to remove all machinery, fixtures, improvements, buildings, and equipment belonging to it upon the premises.

History: En. Sec. 7, Ch. 213, L. 1955; amd. Sec. 98, Ch. 428, L. 1973; R.C.M. 1947, 81-1731(2).

CHAPTER 4

GEOTHERMAL AND HYDROELECTRIC RESOURCES

Part 1 — Geothermal Resources

Section

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Part 1

Geothermal Resources

77-4-101. Geothermal leases authorized. (1) The board may lease state-owned lands, including the beds of navigable streams and the beds of navigable bodies of water, to persons, associations, or corporations for prospecting, exploration, well construction, and the production of geothermal resources.

(2) The board may exercise business discretion in entering into leases under this part.

History: (1)En. 21-2601 by Sec. 1, Ch. 111, L. 1974; Sec. 81-2601, R.C.M. 1947; (2)En. 81-2604 by Sec. 4, Ch. 111, L. 1974; Sec. 81-2604, R.C.M. 1947; R.C.M. 1947, 81-2601, 81-2604(part).

77-4-102. Definitions. Unless the context requires otherwise, in this part the following definitions apply:

(1) "Geothermal resources" means the natural heat energy of the earth, including the energy, in whatever form, which may be found in any position and at any depth below the surface of the earth, either present in, resulting from, created by, or which may be extracted from such natural heat and all minerals in solution or other products obtained from the material medium of any geothermal resource.

(2) "Geothermal development" means any of the operations or facilities necessary for the production of geothermal resources.

History: En. 81-2602 by Sec. 2, Ch. 111, L. 1974; R.C.M. 1947, 81-2602(part).

77-4-103. Rules. The board shall adopt rules governing the issuance of geothermal resource leases and the conduct of all geothermal operations. The board may also require the applicant for a geothermal lease to pay an application fee.

History: En. 81-2603 by Sec. 3, Ch. 111, L. 1974; R.C.M. 1947, 81-2603.

77-4-104. Nature of geothermal resources. Goethermal resources are sui generis, being neither a mineral resource nor a water resource, but they are closely related to and possibly affecting and affected by water resources in many instances.

History: En. 81-2602 by Sec. 2, Ch. 111, L. 1974; R.C.M. 1947, 81-2602(part).

77-4-105. State retention of geothermal resources. No right to seek, obtain, or use geothermal resources has passed or shall pass with any existing or future lease of state or school lands.

History: En. 81-2602 by Sec. 2, Ch. 111, L. 1974; R.C.M. 1947, 81-2602(part).

77-4-106. Bonding requirements. The board may, at any time prior to the execution and delivery of a geothermal lease or at any time during the life of the lease, require a lessee to file with the department a bond to protect the rights of the state. The bond shall be in form and amount prescribed by the board. The board may at any time require new or additional bonds if the interests of the state will not adequately be protected by the bond previously filed.

History: En. 81-2606 by Sec. 6, Ch. 111, L. 1974; R.C.M. 1947, 81-2606.

77-4-107. Compensation to surface lessee. The lessee of any geothermal lease shall compensate the surface lessee for any damage to the surface or leasehold interest caused as a result of the geothermal lease. The board may require the geothermal lessee to post a bond in an amount to be set by the board to insure the payment of damages to any surface lessee. If the surface lessee and the geothermal lessee disagree as to the reasonable amount of surface damage, damage shall be ascertained in the same manner as prescribed in 77-4-129.

History: En. 81-2607 by Sec. 7, Ch. 111, L. 1974; R.C.M. 1947, 81-2607.

77-4-108. Water rights in connection with geothermal development. If any geothermal development located on state land requires the utilization of water, the lessee may, at any time prior to 1 year before the expiration of his lease, make application to the board for permission to secure a water right to the land under his lease. Such application shall be in writing, show the permanency of the water supply, and the estimated cost of utilizing such water resources. If the proposed plan meets with the approval of the board, permission shall be granted to the lessee to secure the desired water right for the land. Such right shall be secured in accordance with Title 85, chapter 2, and shall be filed in the name of the state. Existing water rights purchased by the geothermal lessee shall be the property of the lessee.

History: En. 81-2611 by Sec. 11, Ch. 111, L. 1974; R.C.M. 1947, 81-2611.

77-4-109. Conflicting leases. Where there are conflicting leases, including but not limited to geothermal, coal, mineral, and oil and gas leases, embracing the same land, the person who first was issued a lease shall be entitled to priority of rights; provided, however, that the exercise of this priority shall not interfere with actual production from the lease as determined by the board.

History: En. 81-2612 by Sec. 12, Ch. 111, L. 1974; R.C.M. 1947, 81-2612.

77-4-110 through 77-4-120 reserved.

77-4-121. Provisions of the lease. (1) A lease issued by the board gives the lessee, so long as he complies with the terms and conditions of the lease, the exclusive right of possession of the lands or interests leased, subject to conditions contained in the lease.

(2) In every geothermal resource lease granted there is reserved to this state the right to sell, lease, or otherwise dispose of the surface of the lands covered thereby subject to the rights and privileges granted the lessee under the terms of the lease.

(3) Every lease shall specify the rental and royalty to be paid, reasonable forfeiture provisions, and reasonable terms under which the lessee may, within a specified time, remove property placed on the leased lands upon the termination of the lease by forfeiture or by lapse of time.

(4) Furthermore, the lease may contain other provisions the board and the lessee agree upon, provided that the additional terms are not inconsistent with this part.

History: En. 81-2604 by Sec. 4, Ch. 111, L. 1974; R.C.M. 1947, 81-2604(part).

77-4-122. Duration of lease. The term of each lease shall be for a primary term of 10 years and for so long thereafter as geothermal resources in paying quantities are produced, provided that all conditions and terms of the lease are fully performed by the lessee.

History: En. 81-2604 by Sec. 4, Ch. 111, L. 1974; R.C.M. 1947, 81-2604(part).

77-4-123. Extension of lease. If geothermal resources are not being produced from the leased premises at the expiration of the primary term of the lease but the owner of the lease is then engaged in drilling on the premises for geothermal resources, then the lease term shall be extended for so long as the drilling operations are diligently continued. If geothermal resources are recovered from any well drilled after the expiration of the primary term, the lease shall continue in force so long as geothermal resources in paying quantities are produced from the leased premises.

History: En. 81-2604 by Sec. 4, Ch. 111, L. 1974; R.C.M. 1947, 81-2604(part).

77-4-124. Operating agreements. Lessees may enter into agreements with other persons, associations, firms, and corporations for drilling and other operations on state lands, but no such operating agreements shall be binding upon the state until filed with the department and approved by the board. No drilling or operating agreement may affect the obligations of each individual leaseholder to the state.

History: En. 81-2604 by Sec. 4, Ch. 111, L. 1974; R.C.M. 1947, 81-2604(4).

77-4-125. Pooling agreements and unit operations. (1) Nothing contained in this part or other related laws shall prevent the board from entering into agreements for the pooling of acreage for unit operations for the production of geothermal resources and apportionment of geothermal royalties on an acreage or other equitable basis or from modifying the royalty provisions of existing leases and all subsequent leases in accordance with pooling agreements and unit plans of operation. No agreement may be entered into which changes the percentage of royalties to be paid to the state from the percentages fixed in its leases.

(2) Geothermal resources produced from any part of a unit in which state lands are included by virtue of a pooling agreement shall be considered to be produced from the state lands therein.

History: En. 81-2604 by Sec. 4, Ch. 111, L. 1974; R.C.M. 1947, 81-2604(5), (6).

77-4-126. Royalties and rentals. Geothermal leases shall be issued at an annual rental of not less than $1 per acre, payable in advance and/or a royalty which shall not be less than 10% of the amount or value of steam or other forms of heat or energy derived from the production under the lease and sold or utilized by the lessee or reasonably susceptible to sale or utilization by the lessee and not more than 5% of any byproduct derived from production under the lease and sold or utilized or reasonably susceptible of sale or utilization by the lessee.

History: **En. 81-2605 by Sec. 5, Ch. 111, L. 1974; R.C.M. 1947, 81-2605.**

77-4-127. Disposition of royalties and other receipts. (1) The department shall credit fees collected under geothermal leases to the general fund.

(2) All rentals, penalties, and bonuses shall be credited to the income fund of the grant to which the lands under each lease belong.

(3) All moneys collected as royalties shall be credited to the permanent fund arising from the grant to which the land under each particular lease belongs.

History: **En. 81-2610 by Sec. 10, Ch. 111, L. 1974; R.C.M. 1947, 81-2610.**

77-4-128. Permission for and disposition of improvements. (1) A geothermal lessee of state lands has the right to place upon the leased lands a reasonable amount of improvements, provided that such improvements are directly related to the purpose of the lease.

(2) Whenever another person becomes the geothermal lessee, he shall pay the former lessee the reasonable value of such improvements at the time the new lessee takes possession thereof.

(3) In determining the value of these improvements, the original cost, the present condition, and the suitableness of the improvements for the uses ordinarily made of geothermal resources shall be considered.

(4) The former lessee may, however, remove or dispose of the moveable improvements from the land within 60 days from the expiration of his lease except for the well casing and other equipment necessary for the preservation of any geothermal well. If not removed within 60 days, improvements shall become the property of the state unless the board shall grant additional time for the removal thereof. Before a lease is issued to the new lessee he shall show that he has paid the former lessee the value of the improvements as agreed upon by them or as fixed and determined under 77-4-129, that he has offered to pay the value of the improvements as so fixed and determined, or that the former lessee elects to remove the improvements.

History: **En. 81-2608 by Sec. 8, Ch. 111, L. 1974; R.C.M. 1947, 81-2608.**

77-4-129. Procedure to fix value of improvements. (1) If the owner of any improvements on state lands of the type authorized by law at the time they were placed thereon desires to sell these improvements to the new lessee and they are unable to agree on the value thereof, the value shall be ascertained and fixed by three arbitrators, one of whom shall be appointed by the owner of the improvements, one by the new lessee, and the third by the two arbitrators so appointed. The reasonable compensation that the arbitrators may fix shall be paid in equal shares by the owner of the improvements and the new lessee. The value of the improvements so ascertained and fixed is binding on both parties.

(2) If either party is dissatisfied with the valuation so fixed, he may within 10 days appeal from their decision to the department which shall examine the improvements and make the final decision as to the value of the improvements. The department shall apportion the actual cost of the reexamination to the owner and the new lessee as justice may require. The value of the improvements shall be ascertained and fixed as provided in 77-4-128.

History: En. 81-2609 by Sec. 9, Ch. 111, L. 1974; R.C.M. 1947, 81-2609.

Part 2

Hydroelectric Resources

77-4-201. Lease or license of power sites. It shall be unlawful to sell or advertise for sale state lands constituting power sites or part of power sites capable of developing hydroelectric energy in commercial quantities; but the board is hereby granted power and authority to issue lease or license to any person, corporation, or municipality for the development of such power sites and the distribution, use, and disposition of the electric energy generated thereon, as herein more specifically provided.

History: En. Sec. 2, Ch. 123, L. 1931; re-en. Sec. 1904.2, R.C.M. 1935; R.C.M. 1947, 81-1802.

77-4-202. Power site defined. The words "power site" as used in this part shall mean not only the state-owned land on which the dam is constructed, but also each separate tract of such land which will become part of the reservoir and which in and of itself makes an essential contribution to the value of the power site as a whole of not less than 5% of the entire value of such power site.

History: En. Sec. 1, Ch. 123, L. 1931; re-en. Sec. 1904.1, R.C.M. 1935; R.C.M. 1947, 81-1801.

77-4-203. Restrictions and regulations. In issuing any lease or license under the provisions of this part, the board shall have the power and it shall be its duty to incorporate in the lease or license such reasonable restrictions and regulations as it finds necessary in order to protect the interest of the state and its people.

History: En. Sec. 6, Ch. 123, L. 1931; re-en. Sec. 1904.6, R.C.M. 1935; R.C.M. 1947, 81-1806.

77-4-204. Examination of power sites. Whenever an application in writing has been presented to the board for lease or license on a power site on state lands, the board shall make such preliminary examination as to the value of the power site, as to the plans of development submitted by the applicant, and of all other matters relating to the proposed development as it deems necessary for the proper disposition of the business.

History: En. Sec. 3, Ch. 123, L. 1931; re-en. Sec. 1904.3, R.C.M. 1935; R.C.M. 1947, 81-1803(part).

77-4-205. Notice of proposed lease or license. If these preliminary investigations and the offer made for lease or license are such that the board deems further proceedings on the application to be justified, it shall cause notice of the proposed lease or license to be published not less than once each week during not less than 6 weeks previous to the meeting at which further consideration will be given to the application in two newspapers of general circulation throughout the state, one of such newspapers to be published in the neighborhood of the location of the power site.

History: En. Sec. 3, Ch. 123, L. 1931; re-en. Sec. 1904.3, R.C.M. 1935; R.C.M. 1947, 81-1803(part).

77-4-206. Meeting of board on proposed lease or license. (1) At this meeting all other applications which may have been received for lease or license to such power sites shall be duly considered together with the application originally filed.

(2) The board shall have the right to reject any or all bids.

(3) If, however, the board finds that any of the bids submitted offers to pay adequate rental for such power site, shows to the satisfaction of the board that it is capable of carrying out the proposed development and of rendering efficient service to the customers that will be served from such power development, and intends in good faith without any unnecessary delay to proceed with the development, then the board shall accept such bid. If more than one such acceptable bid is received, then the lease or license shall be awarded to the person, corporation, or municipality whose offer, considered in its totality, is the most advantageous to the state.

History: En. Sec. 3, Ch. 123, L. 1931; re-en. Sec. 1904.3, R.C.M. 1935; R.C.M. 1947, 81-1803(part).

77-4-207. Preference to bid of municipality. In case one of the applicants is a municipality, its bid shall have preference provided that it is in all respects as advantageous to the state as the bid which has been submitted by any person or corporation.

History: En. Sec. 3, Ch. 123, L. 1931; re-en. Sec. 1904.3, R.C.M. 1935; R.C.M. 1947, 81-1803(part).

77-4-208. Rental for power sites. The rental to the state must be paid annually or semiannually and such rental shall not be less than the full market value of the estate or interest disposed of through the granting of the lease or license, such value to be carefully ascertained from all available sources.

History: En. Sec. 3, Ch. 123, L. 1931; re-en. Sec. 1904.3, R.C.M. 1935; R.C.M. 1947, 81-1803(part).

77-4-209. Duration of lease. The term of the lease shall not exceed 50 years.

History: En. Sec. 3, Ch. 123, L. 1931; re-en. Sec. 1904.3, R.C.M. 1935; R.C.M. 1947, 81-1803(part).

77-4-210. Joint development with the United States. (1) If the state land constituting such power site is part of a larger power site owned or controlled by the government of the United States, then the board may grant a joint lease or license with the United States for the development of the power site and the distribution, use, and disposition of the electric energy generated at such power site under the laws of the United States and regulations issued pursuant thereto.

(2) Such lease or license may be granted for a term not exceeding 50 years.

(3) The share or percentage of ownership of the state in such joint power site shall be in proportion to the total contribution that the lands of the state make to the value of the entire power site. Before the share of the state in such power site is advertised for lease or license, the percentage of the state's share in the entire power site must be calculated and agreed upon between the state and the United States.

(4) The fee or compensation from time to time to be paid to the state under such lease or license shall be calculated on the basis of the state's share of ownership in the entire power site as calculated and agreed to; provided, however, that it shall not be less than the full market value of the estate or interest disposed of in such lands through the granting of the lease or license to be carefully ascertained from all available sources.

(5) Before such lease or license is issued, notice thereof must be given in the same manner as herein required for the issuance of a separate lease or license by the state.

History: En. Sec. 4, Ch. 123, L. 1931; re-en. Sec. 1904.4, R.C.M. 1935; R.C.M. 1947, 81-1804.

77-4-211. Amortization of investment. (1) In all cases where the lease or license issued by the United States requires the amortization of the investment made in dams, machinery, equipment, and appurtenant works, such amortization requirement shall also apply to that portion of the investment representing the state's part or share in the power site so that the state will at all times retain its full share of ownership in the power site and in the dams, machinery, equipment, and appurtenant works.

(2) If the state lands constitute a separate power site wholly owned by the state and independently developed, the lease or license issued by the state may provide for the amortization of the capital invested in the dam, machinery, equipment, and appurtenant works, not including the distribution system, so that ultimately the state will become the owner of the power site including the dam, machinery, equipment, and appurtenant works, not including the distribution system.

History: En. Sec. 5, Ch. 123, L. 1931; re-en. Sec. 1904.5, R.C.M. 1935; R.C.M. 1947, 81-1805.

CHAPTER 5

TIMBER RESOURCES

Part 1 — State Forests

Section

77-5-101. Classification of lands as state forests.
77-5-102. Designation of state forests.
77-5-103. Role of department.
77-5-104. Firewardens.
77-5-105. Powers of firewardens.
77-5-106. Misconduct by paid firewarden.

Part 2 — Timber Sales and Removal

77-5-201. Sale of timber.

77-5-202. Agreement with purchaser — bond.
77-5-203. Breach of timber sale agreement.
77-5-204. Sale of timber — fees for brush disposal and timber stand improvement.
77-5-205. Approval or disapproval of sales.
77-5-206. Management of timber by department of natural resources and conservation.
Sections 77-5-207 through 77-5-210 reserved.
77-5-211. Free permit to remove timber.
77-5-212. Commercial permits for timber removal.
77-5-213. Permits for farm and ranch repair and development.

Chapter Compiler's Comments

Functions of Department of Natural Resources and Conservation Transferred to Department of State Lands: Section 1, Ch. 529, L. 1981, provided: "(1) The functions of protecting natural resources from fire in Title 76, chapter 11, part 1; of protection of forest resources in Title 76, chapter 13; of appraising, protecting, and selling state timberlands in Title 77, chapter 5; and of recommending closing lands to hunting and fishing in fire danger areas under 87-3-106 are transferred from the department of natural resources and conservation to the department of state lands.

(2) Unless inconsistent with this act, any reference to "department of natural resources and conservation" in those sections is changed to "department of state lands".

(3) Any corresponding internal references shall be changed by the code commissioner."

Severability: Section 9, Ch. 529, L. 1981, was a severability section.

Transition: Section 10, Ch. 529, L. 1981, provided: "The provisions of 2-15-131 through 2-15-137 apply to the transfer of functions under this act."

Effective Date: Section 11, Ch. 529, L. 1981, provided: "This act is effective July 1, 1981."

Part 1

State Forests

77-5-101. Classification of lands as state forests. All lands at present owned by the state and all that may hereafter be acquired by the state through escheat, exchange, purchase, grant, or devise which are principally valuable for the timber that is on them or for the growing of timber or for watershed protection are hereby classified and designated "state forests" and reserved for forest production and watershed protection.

History: En. Sec. 1, Ch. 179, L. 1925; re-en. Sec. 1830.1, R.C.M. 1935; amd. Sec. 1, Ch. 145, L. 1949; amd. Sec. 1, Ch. 167, L. 1951; amd. Sec. 97, Ch. 253, L. 1974; R.C.M. 1947, 81-1401.

77-5-102. Designation of state forests. The following state forest units are hereby established, primarily to secure through forestry management a continuous supply of timber and the performance of watershed covers:

(1) A state forest containing lands owned or hereafter acquired by the state, now comprising about 90,000 acres, situated in the watersheds of the Stillwater and Whitefish Rivers of Flathead and Lincoln Counties shall hereafter be known and designated as the "Stillwater State Forest".

(2) A state forest containing all lands owned or hereafter acquired by the state, now comprising about 42,000 acres, situated in the Swan River watershed of Lake County shall hereafter be known and designated as the "Swan River State Forest".

(3) A state forest containing all lands owned or hereafter acquired by the state, now comprising about 20,000 acres, situated in the Coal Creek watershed of the North Fork of the Flathead River shall hereafter be known and designated as the "Coal Creek State Forest".

(4) A state forest containing all lands owned or hereafter acquired by the state, now comprising about 10,000 acres situated in the watersheds of Camp and Cameron Creeks of Ross Hole of Ravalli County shall hereafter be known and designated as the "Sula State Forest".

(5) A state forest containing all lands owned or hereafter acquired by the state, now comprising about 14,628 acres, situated in the west half of township 25 north, range 26 west; and township 23 north, range 27 west; and west half of township 22 north, range 26 west; and township 21 north, range 26 west, except sections 4, 5, 6, 7, 8, and 18, in the Thompson River watershed of Sanders County shall hereafter be known and designated as the "Thompson River State Forest".

(6) A state forest containing all lands owned or hereafter acquired by the state, now comprising about 18,076 acres, situated in townships 13, 14, and 15 north, range 14 west; and townships 13 and 16 north, range 15 west, Montana meridian, in the Clearwater River watershed of Missoula County shall hereafter be known and designated as the "Clearwater State Forest".

(7) A state forest containing all lands owned or hereafter acquired by the state, now comprising about 8,245 acres, situated in township 14 north, ranges 7, 8, and 9 west; and township 13 north, ranges 8 and 9 west, Montana meridian, of the Blackfoot River watershed in Lewis and Clark County shall hereafter be known and designated as the "Lincoln State Forest".

History: En. Sec. 2, Ch. 179, L. 1925; re-en. Sec. 1830.2, R.C.M. 1935; R.C.M. 1947, 81-1402.

77-5-103. Role of department. (1) The department shall, under the direction and control of the board, do all the field work in the selection, location, examination, appraisement, and reappraisement of state timberlands.

(2) It shall do all acts required of it by the board, and under the direction of the board it has general charge of the timberlands of the state.

(3) It shall, under the supervision of the board, execute all matters pertaining to forestry within the jurisdiction of the state; have charge of all firewardens of the state and direct and aid them in their duties; direct the protection, improvement, and condition of state forests; take such action as is authorized by law to prevent and extinguish forest, brush, and grass fires; enforce the laws pertaining to forest and brushcover lands and prosecute for any violation of those laws.

(4) The department shall establish and maintain forest fire control training programs for state firefighters and other persons requiring training.

History: En. Sec. 10, Ch. 147, L. 1909; amd. Sec. 2, Ch. 118, L. 1911; re-en. Sec. 1831, R.C.M. 1921; re-en. Sec. 1831, R.C.M. 1935; amd. Sec. 1, Ch. 218, L. 1955; amd. Sec. 34, Ch. 93, L. 1969; amd. Sec. 102, Ch. 253, L. 1974; amd. Sec. 16, Ch. 397, L. 1977; R.C.M. 1947, 81-1411; amd. Sec. 1, Ch. 529, L. 1981.

Compiler's Comments

1981 Amendment: Changed the department of natural resources and conservation to the department of state lands. "Department" means department of state lands. See 77-1-101.

Severability: Section 9, Ch. 529, L. 1981, was a severability section.

Effective Date: Section 11, Ch. 529, L. 1981, provided: "This act is effective July 1, 1981."

Cross-References

Department defined, 77-1-101.

77-5-104. Firewardens. (1) The department shall appoint firewardens in such number and localities as it considers necessary.

(2) The supervisors and rangers of the federal forest lands within this state, whenever they formally accept the duties and responsibilities of firewardens, may be appointed firewardens.

(3) The following are firewardens but may not receive any additional compensation by reason of the duties hereby imposed:

(a) sheriffs;
(b) undersheriffs;
(c) deputy sheriffs;
(d) state fish, wildlife, and parks wardens;
(e) the state fish, wildlife, and parks director;
(f) members of the board of natural resources and conservation;
(g) the director of the department and employees of the department designated by him;
(h) officers of organized forest protection districts;
(i) members of the Montana highway patrol;
(j) officers of the national park service residing in Montana; and
(k) officers of the bureau of Indian affairs.

(4) The firewardens shall promptly report all fires to the department, take immediate and active steps toward their extinguishment, report any violation of forest laws, and assist in apprehending and convicting offenders.

History: En. Sec. 11, Ch. 147, L. 1909; re-en. Sec. 1833, R.C.M. 1921; re-en. Sec. 1833, R.C.M. 1935; amd. Sec. 1, Ch. 147, L. 1955; amd. Sec. 103, Ch. 253, L. 1974; amd. Sec. 17, Ch. 17, L. 1977; R.C.M. 1947, 81-1412; amd. Sec. 2, Ch. 218, L. 1979; amd. Sec. 1, Ch. 529, L. 1981.

Compiler's Comments

1981 Amendment: Changed the department of natural resources and conservation to the department of state lands in three places. "Department" means department of state lands. See 77-1-101.

Severability: Section 9, Ch. 529, L. 1981, was a severability section.

Effective Date: Section 11, Ch. 529, L. 1981, provided: "This act is effective July 1, 1981."

Cross-References

Department defined, 77-1-101.

77-5-105. Powers of firewardens. (1) All firewardens have the power of peace officers to make arrests without warrants for violations in their presence of any state or federal forest laws, and a firewarden is not liable for civil action for trespass committed in the discharge of his duties. A firewarden who has information which shows, with reasonable certainty, that a person has violated any provision of those forest laws shall immediately take action against the offender by making complaint before the proper magistrate, or by information to the proper county attorney and shall obtain all possible evidence pertaining thereto.

(2) All firewardens shall have authority to call upon any able-bodied citizen between the ages of 18 and 50 years, resident in the vicinity, for assistance in putting out fires; and any such person who refuses to obey such summons, except for good and sufficient reason, is guilty of a misdemeanor and upon conviction shall be fined in a sum not less than $15 or more than $50 or imprisonment in the county jail not less than 1 or more than 30 days or both such fine and imprisonment. No citizen shall be called upon to fight fire a total of more than 5 days in one year.

History: (1)En. Sec. 12, Ch. 147, L. 1909; re-en. Sec. 1834, R.C.M. 1921; re-en. Sec. 1834, R.C.M. 1935; amd. Sec. 104, Ch. 253, L. 1974; Sec. 81-1413, R.C.M. 1947; (2)En. Sec. 13, Ch. 147, L. 1909; re-en. Sec. 1835, R.C.M. 1921; re-en. Sec. 1835; R.C.M. 1935; Sec. 81-1414, R.C.M. 1947; R.C.M. 1947, 81-1413(part), 81-1414.

77-5-106. Misconduct by paid firewarden. Failure on the part of a paid firewarden to comply with the duties prescribed in this chapter is a misdemeanor, punishable by a fine of not less than $20 or more than $1,000 or imprisonment in the county jail for not less than 10 days or more than 12 months or by both such fine and imprisonment. Upon his conviction, the district court wherein he is convicted shall immediately declare his office vacant and notify the proper appointing power thereof.

History: En. Sec. 12, Ch. 147, L. 1909; re-en. Sec. 1834, R.C.M. 1921; re-en. Sec. 1834, R.C.M. 1935; amd. Sec. 104, Ch. 253, L. 1974; R.C.M. 1947, 81-1413(part).

Part 2

Timber Sales and Removal

77-5-201. Sale of timber. (1) Under the direction of the board, the department may sell the timber crop and other crops of the forests after examination, estimate, appraisal, and report and under such rules as may be established by the board.

(2) Timber proposed for sale in excess of 100,000 board feet shall be advertised in a paper of the county in which the timber is situated for a period of at least 30 days, during which time the department shall receive sealed bids up to the hour of the closing of the bids, as specified in the notice of sale.

(3) In cases of emergency due to fire, insect, fungus, parasite, or blowdown, timber proposed for sale not in excess of 200,000 board feet may be advertised by invitation to bid for a period of not less than 10 days. The department may reject any or all bids, upon approval of the board, or it shall award the sale to the highest responsible bidder.

History: En. Sec. 4, Ch. 179, L. 1925; re-en. Sec. 1830.4, R.C.M. 1935; amd. Sec. 98, Ch. 253, L. 1974; amd. Sec. 1, Ch. 301, L. 1977; R.C.M. 1947, 81-1404(part); amd. Sec. 1, Ch. 529, L. 1981.

Compiler's Comments

1981 Amendment: Changed the department of natural resources and conservation to the department of state lands. "Department" means department of state lands. See 77-1-101.

Severability: Section 9, Ch. 529, L. 1981, was a severability section.

Effective Date: Section 11, Ch. 529, L. 1981, provided: "This act is effective July 1, 1981."

Cross-References

Department defined, 77-1-101.

77-5-202. Agreement with purchaser — bond. (1) Upon award of sale the purchaser shall execute a formal agreement, approved by the board, which describes the area on which the timber is to be cut, the approximate quantity to be cut by species, and the rate for each product of each species. The agreement shall stipulate that all timber shall be paid for in advance of cutting, fix a date for termination of the agreement, and define rules of silviculture, cutting, utilization, scaling, and slash disposal and such other rules as in the discretion of the board are essential to the perpetuation of the state forests.

(2) As a guarantee for the faithful performance of the agreement, the purchaser shall be required to furnish a bond, with sufficient sureties, to the state of Montana, in an amount equal to at least 20% of the estimated value of timber sold.

History: (1)En. Sec. 4, Ch. 179, L. 1925; re-en. Sec. 1830.4, R.C.M. 1935; amd. Sec. 98, Ch. 253, L. 1974; amd. Sec. 1, Ch. 301, L. 1977; Sec. 81-1404, R.C.M. 1947; (2)En. Sec. 5, Ch. 179, L. 1925; re-en. Sec. 1830.5, R.C.M. 1935; Sec. 81-1405, R.C.M. 1947; R.C.M. 1947, 81-1404(part), 81-1405.

77-5-203. Breach of timber sale agreement. For breach of timber sale agreement, the department may suspend cutting or removal of the timber and take such steps as are advisable upon advice and counsel of the attorney general to adjust the breach or to liquidate the state's claim for damages or it may submit the case with full report as to damages sustained by the state to the attorney general for collection on the bond.

History: En. Sec. 6, Ch. 179, L. 1925; re-en. Sec. 1830.6, R.C.M. 1935; amd. Sec. 99, Ch. 253, L. 1974; R.C.M. 1947, 81-1406; amd. Sec. 1, Ch. 529, L. 1981.

Compiler's Comments

1981 Amendment: Changed the department of natural resources and conservation to the department of state lands. "Department" means department of state lands. See 77-1-101.

Severability: Section 9, Ch. 529, L. 1981, was a severability section.

Effective Date: Section 11, Ch. 529, L. 1981, provided: "This act is effective July 1, 1981."

Cross-References

Department defined, 77-1-101.

77-5-204. Sale of timber — fees for brush disposal and timber stand improvement. (1) The board may sell timber on state lands, at such price per 1,000 feet as in its judgment is in the best interest of the state, but not otherwise; but no such sale of live timber shall be less than $3 per 1,000 feet for white pine, yellow pine, and spruce or less than $1.50 per 1,000 feet for all other timber species.

(2) All timber sold or cut from state lands shall be cut and removed under such rules for the preservation of standing timber and the prevention of fires as the board prescribes. In all cases the board must require the person cutting the timber to pile and burn or otherwise dispose of the brush and slashings in such manner as may be required.

(3) Before any sale is granted, the timber shall be estimated and appraised under the direction of the department, upon the request and subject to the approval of the board. These estimates and appraisals shall show as nearly as possible the amount and values per 1,000 feet of all merchantable timber, together with a statement of the situation of the timber relative to risk from fires or damage of any kind, its distance from the nearest lake, stream, or railroad, and its value and position as a protection to a watershed.

(4) The board may set fees for brush disposal on state lands. The board may also establish a fee for timber stand improvement on timber cut on state lands. Such fees shall be deposited in the earmarked revenue fund to the credit of the department.

History: En. Sec. 3560, p. 193, L. 1897; re-en. Sec. 2213, Rev. C. 1907; amd. Sec. 53, Ch. 147, L. 1909; amd. Sec. 4, Ch. 118, L. 1911; amd. Sec. 1, Ch. 26, L. 1919; re-en. Sec. 1872, R.C.M. 1921; amd. Sec. 1, Ch. 132, L. 1933; re-en. Sec. 1872, R.C.M. 1935; amd. Sec. 219, Ch. 147, L. 1963; amd. Sec. 82, Ch. 428, L. 1973; R.C.M. 1947, 81-1601; amd. Sec. 1, Ch. 529, L. 1981.

Compiler's Comments

1981 Amendment: Changed the department of natural resources and conservation to the department of state lands in two places. "Department" means department of state lands. See 77-1-101.

Severability: Section 9, Ch. 529, L. 1981, was a severability section.

Effective Date: Section 11, Ch. 529, L. 1981, provided: "This act is effective July 1, 1981."

Cross-References

Department defined, 77-1-101.

77-5-205. Approval or disapproval of sales. All sales of timber on state lands shall be subject to the approval and confirmation by the board, and no sale shall be deemed completed until after such approval and confirmation. The board shall have the power and it shall be its duty to disapprove any sale which in its opinion would be disadvantageous to the state.

History: En. Sec. 82, Ch. 60, L. 1927; re-en. Sec. 1805.82, R.C.M. 1935; R.C.M. 1947, 81-918(part).

77-5-206. Management of timber by department. (1) The department shall supervise all the management of timber before it is cut and secure the most complete utilization of all forest products consistent with the current forest management practices.

(2) It shall instruct and supervise the cruisers, forest wardens, and scalers in the conduct of their work and fix and establish the standard practice in timber sales administration. It shall require that each merchantable log be scaled by the Scribner Decimal C log rule at the small end on the average diameter inside bark taken to the nearest inch and that deduction be made for any apparent defect, or it shall fix and determine converting factors and units of measure for all forest products, which shall be as nearly as practical equivalent to the Scribner Decimal C log scale.

(3) Records of converting factors, units of measure, and the scale of logs shall be kept as a permanent public record showing the date of scale or measurement, the designation of the scale, and the name of the scaler.

(4) Where the volume of timber involved is not in excess of 1 million board feet log scale, the department may designate each tree to be cut and make a tree scale measurement of all trees to be sold.

History: En. Sec. 8, Ch. 179, L. 1925; re-en. Sec. 1830.8, R.C.M. 1935; amd. Sec. 1, Ch. 40, L. 1945; amd. Sec. 1, Ch. 219, L. 1955; amd. Sec. 1, Ch. 145, L. 1963; amd. Sec. 100, Ch. 253, L. 1974; R.C.M. 1947, 81-1408; amd. Sec. 1, Ch. 529, L. 1981.

Compiler's Comments

1981 Amendment: Changed the department of natural resources and conservation to the department of state lands in two places. "Department" means department of state lands. See 77-1-101.

Severability: Section 9, Ch. 529, L. 1981, was a severability section.

Effective Date: Section 11, Ch. 529, L. 1981, provided: "This act is effective July 1, 1981."

Cross-References

Department defined, 77-1-101.

77-5-207 through 77-5-210 reserved.

77-5-211. Free permit to remove timber. Permits may be issued free of charge for dead, down, or inferior timber in such quantities and under such restrictions and regulations as the board may approve for fuel and domestic purposes to residents and settlers of the state.

History: En. Sec. 7, Ch. 179, L. 1925; re-en. Sec. 1830.7, R.C.M. 1935; amd. Sec. 1, Ch. 217, L. 1955; R.C.M. 1947, 81-1407(part).

77-5-212. Commercial permits for timber removal. (1) Permits may be issued to citizens of the state for commercial purposes at commercial rates without advertising under such restrictions and rules as the board may approve for timber in quantities of less than 100,000 feet board measure; and in cases of emergency due to fire, insect, fungus, parasite, or blowdown and no other, in quantities of less than 200,000 feet board measure.

(2) Repeated permits of this kind shall not be issued to avoid advertising and the consequent competition secured thereby.

History: En. Sec. 7, Ch. 179, L. 1925; re-en. Sec. 1830.7, R.C.M. 1935; amd. Sec. 1, Ch. 217, L. 1955; R.C.M. 1947, 81-1407(part).

77-5-213. Permits for farm and ranch repair and development. Permits for cutting and removal of timber may be issued to farmers, ranchers, and prospectors with such restrictions and regulations as the board may approve for timber in quantities of 25,000 feet board measure or less when it is to be used for domestic purposes in the repair and development of the ranch or farm; provided, that not to exceed 25,000 feet board measure shall be granted in any one year to any one person. The rates of charge for such permits shall be fixed by the board.

History: En. Sec. 7, Ch. 179, L. 1925; re-en. Sec. 1830.7, R.C.M. 1935; amd. Sec. 1, Ch. 217, L. 1955; R.C.M. 1947, 81-1407(part).

CHAPTER 6

AGRICULTURAL, GRAZING, AND OTHER SURFACE LEASES

Part 1 — General Provisions

Section

77-6-101. Statement of policy.
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Part 1

General Provisions

77-6-101. Statement of policy. It is hereby declared to be the policy of the state, that in the interest of accomplishing a sustained income for the school and other trust funds to be derived from land grant and other state lands, agricultural and grazing lands and town and city lots shall be appraised from time to time but not less than once during the term of every lease by competent appraisers. The purpose of such appraisals shall be to determine the rental value of agricultural lands and town and city lots, the general condition of the lands, and the carrying capacity of grazing lands.

History: En. Sec. 1, Ch. 207, L. 1945; amd. Sec. 1, Ch. 260, L. 1963; R.C.M. 1947, 81-401.

77-6-102. Leases of agricultural and grazing lands and city lots authorized. Under the general direction and control of the board, the department shall lease all agricultural and grazing lands and all town and city lots open to leasing upon proper application.

History: En. Sec. 20, Ch. 60, L. 1927; re-en. Sec. 1805.20, R.C.M. 1935; amd. Sec. 2, Ch. 207, L. 1945; amd. Sec. 1, Ch. 254, L. 1947; amd. Sec. 2, Ch. 201, L. 1949; amd. Sec. 2, Ch. 260, L. 1963; amd. Sec. 2, Ch. 257, L. 1965; amd. Sec. 10, Ch. 428, L. 1973; amd. Sec. 1, Ch. 134, L. 1974; amd. Sec. 2, Ch. 135, L. 1974; R.C.M. 1947, 81-402(part).

77-6-103. Lease of state land to United States for military purposes authorized. The board, when it considers it in the public interest, may lease to the United States for military purposes any state land, whether such land was received by the state through federal land grants or whether such land consists of so-called "mortgage lands", on such terms and conditions as it considers necessary to promote the public welfare and protect the interests of the state. Rental shall be payable at the end of each year of the lease.

History: En. Sec. 1, Ch. 122, L. 1943; amd. Sec. 25, Ch. 428, L. 1973; R.C.M. 1947, 81-424.

77-6-104. Leasing rules. The board may prescribe rules relating to the leasing of state lands as it considers necessary in order that the use and proceeds of these lands may contribute in the highest attainable measure to the purposes for which they are granted to the state of Montana.

History: En. Sec. 37, Ch. 60, L. 1927; re-en. Sec. 1805.37, R.C.M. 1935; amd. Sec. 24, Ch. 428, L. 1973; R.C.M. 1947, 81-423.

77-6-105. Criteria for determining land to be included in single lease. (1) All lands shall be leased in as compact bodies as possible, and care shall be taken not to separate parts of any section from the section lines or public highways or from any available water supply or in a form that will make it more difficult to lease the remaining state lands in the section in which they are located.

(2) There may be included under one lease tracts of lands embracing more than one section.

History: (1)En. Sec. 27, Ch. 60, L. 1927; re-en. Sec. 1805.27, R.C.M. 1935; amd. Sec. 3, Ch. 257, L. 1965; amd. Sec. 16, Ch. 428, L. 1973; Sec. 81-413, R.C.M. 1947; (2)En. Sec. 23, Ch. 60, L. 1927; amd. Sec. 2, Ch. 42, L. 1933; re-en. Sec. 1805.23, R.C.M. 1935; amd. Sec. 2, Ch. 65, L. 1939; amd. Sec. 5, Ch. 260, L. 1963; amd. Sec. 18, Ch. 240, L. 1971; amd. Sec. 30, Ch. 94, L. 1973; amd. Sec. 14, Ch. 428, L. 1973; amd. Sec. 3, Ch. 135, L. 1974; Sec. 81-407, R.C.M. 1947; R.C.M. 1947, 81-407(part), 81-413(part).

77-6-106. Leased lands subject to later sale. All leases of agricultural or grazing lands or town or city lots shall be upon condition that the board may, in its discretion, offer the land for sale at any regular public sale of state lands held in the county where the land is situated, upon the same terms and in the same manner as land not under lease.

History: En. Sec. 20, Ch. 60, L. 1927; re-en. Sec. 1805.20, R.C.M. 1935; amd. Sec. 2, Ch. 207, L. 1945; amd. Sec. 1, Ch. 254, L. 1947; amd. Sec. 2, Ch. 201, L. 1949; amd. Sec. 2, Ch. 260, L. 1963; amd. Sec. 2, Ch. 257, L. 1965; amd. Sec. 10, Ch. 428, L. 1973; amd. Sec. 1, Ch. 134, L. 1974; amd. Sec. 2, Ch. 135, L. 1974; R.C.M. 1947, 81-402(4).

77-6-107. Leases of land wanted for both agricultural and grazing use. If there are applications or bids for renting certain land for grazing purposes and also applications or bids for renting the same land for agricultural purposes, an inspection of the land shall be made by the department at the earliest practical opportunity and a determination made, based on its findings, of the highest and best use which can be made of the land or portions thereof. Any lease of the land subsequent to the applications or bids shall be such as to return to the state revenue commensurate with the highest and best use.

History: En. Sec. 27, Ch. 60, L. 1927; re-en. Sec. 1805.27, R.C.M. 1935; amd. Sec. 3, Ch. 257, L. 1965; amd. Sec. 16, Ch. 428, L. 1973; R.C.M. 1947, 81-413(part).

77-6-108. Who may lease. No person may lease state lands, except one who is the head of a family, unless he has attained the age of 18 years. Any such person and any association, company, or corporation authorized to hold lands under lease may lease state lands and may hold more than one lease to state lands.

History: En. Sec. 23, Ch. 60, L. 1927; amd. Sec. 2, Ch. 42, L. 1933; re-en. Sec. 1805.23, R.C.M. 1935; amd. Sec. 2, Ch. 65, L. 1939; amd. Sec. 5, Ch. 260, L. 1963; amd. Sec. 18, Ch. 240, L. 1971; amd. Sec. 30, Ch. 94, L. 1973; amd. Sec. 14, Ch. 428, L. 1973; amd. Sec. 3, Ch. 135, L. 1974; R.C.M. 1947, 81-407(part).

77-6-109. Duration of lease. No lease to agricultural or grazing lands may be for a period other than 5 or 10 years. Leases for city and town lots may not exceed 25 years.

History: En. Sec. 23, Ch. 60, L. 1927; amd. Sec. 2, Ch. 42, L. 1933; re-en. Sec. 1805.23, R.C.M. 1935; amd. Sec. 2, Ch. 65, L. 1939; amd. Sec. 5, Ch. 260, L. 1963; amd. Sec. 18, Ch. 240, L. 1971; amd. Sec. 30, Ch. 94, L. 1973; amd. Sec. 14, Ch. 428, L. 1973; amd. Sec. 3, Ch. 135, L. 1974; R.C.M. 1947, 81-407(part).

77-6-110. Lease expiration dates. All leases for agricultural lands, grazing lands issued after February 27, 1939, no matter on what date issued, shall expire on February 28 within 10 years from the date on which the lease becomes effective.

History: En. Sec. 24, Ch. 60, L. 1927; re-en. Sec. 1805.24, R.C.M. 1935; amd. Sec. 3, Ch. 65, L. 1939; amd. Sec. 4, Ch. 135, L. 1974; R.C.M. 1947, 81-408.

77-6-111. Uniform lease renewal. Notwithstanding any other section in this chapter, the department may, in order to achieve uniformity in the number of lease renewals per year, issue 4-, 5-, and 6-year grazing and agricultural leases during the 5-year period 1979-1983. Leases to be issued for other than 10-year terms shall be chosen by means of a nondiscretionary, random process and shall be limited to those leases which were not subject to competitive bid at the previous renewal.

History: En. 81-407.1 by Sec. 1, Ch. 304, L. 1977; R.C.M. 1947, 81-407.1.

77-6-112. Liens on crops and improvements. (1) The state has a lien upon all crops growing upon any of its lands and upon the crops after they have been separated from the lands for any rentals and penalties due or delinquent under the lease on the lands or becoming due during the calendar year in which the crops are harvested, for any year or part of a year that the land has been held or used by the lessee. This lien applies to all buildings, structures, fences, and all other improvements and is prior and superior to all other liens, except threshermen's liens and seed liens specified in 71-3-701 and 71-3-801, which have priority, but only for the aggregate amount of the indebtedness then existing, including any advances theretofore made, interest due and other charges as evidenced by the original loan-contract, and indebtedness thereafter accumulating on such basis, exclusive of any other future advances originally contemplated.

(2) Any person acquiring any of these crops or improvements takes them subject to this lien. The department or the sheriff of the county in which the land is located may demand of the lessee payment of the amounts due the state, and if they are not paid upon demand, the officer making the demand or the department may seize and sell, either at a private or public sale, upon giving notice for not less than 3 days of the sale, sufficient of those crops or improvements, or of both, to pay the amounts due the state together with costs and expenses of seizure and sale. These provisions relating to liens on crops and improvements shall be embodied in all leases for agricultural and grazing lands and for town, city, or other lots.

History: En. Sec. 31, Ch. 60, L. 1927; re-en. Sec. 1805.31, R.C.M. 1935; amd. Sec. 20, Ch. 428, L. 1973; R.C.M. 1947, 81-418.

77-6-113. Lease conditions — cancellation. (1) It shall be a condition of all leases of agricultural or grazing state lands that:

(a) in the case of agricultural lands, the lessee shall observe the ordinary rules for good management of agricultural lands and shall handle the leased land with the view of maintaining its productivity and minimizing wind and soil erosion and noxious weeds and planting crops with a view of securing the greatest yields of good quality; and

(b) in the case of grazing lands, the lessee shall observe the ordinary rules for good range management and shall manipulate the numbers, class, distribution, and season of the range use and the handling, feeding, breeding, and marketing of grazing livestock with a view of securing the production of the maximum of livestock and livestock products, consistent with the conservation of the land resources and the perpetuation of its productivity, and to these ends the state land lease may not be abused by overgrazing.

(2) For the gross violation of any of these rules, the lease involved shall be canceled by the department, subject to the appeal procedure provided in 77-6-211.

History: **En. Sec. 10, Ch. 207, L. 1945; amd. Sec. 4, Ch. 254, L. 1947; amd. Sec. 3, Ch. 27, L. 1971; amd. Sec. 18, Ch. 428, L. 1973; R.C.M. 1947, 81-415.**

77-6-114. Lessee responsible for assessments and taxes for weed control. It shall be the duty of the board in leasing any agricultural state land to provide in such lease that the lessee of lands so leased lying within the boundaries of any noxious weed control and weed seed extermination district shall assume and pay all assessments and taxes levied by the board of county commissioners for such district on such state lands, and such assessments and tax levy shall be imposed on such lessee as a personal property tax and shall be collected by the county treasurer in the same manner as regular personal property taxes are collected. All such state lessees shall be required under the terms of such lease to pay such assessment and tax levy at the same time and manner as other regular personal taxes are paid.

History: **En. Sec. 11, Ch. 195, L. 1939; amd. Sec. 3, Ch. 90, L. 1941; amd. Sec. 3, Ch. 228, L. 1947; R.C.M. 1947, 16-1715(part).**

77-6-115. Acquisition of water right by lessee. (1) The lessee of state lands may at any time prior to 1 year before the expiration of his lease make application to the board for permission to secure a water right to the land under his lease. Such application shall be in writing, shall show how much of the land can be irrigated, the permanency of the water supply, and the probable cost of placing the land under irrigation. If the proposed plan meets with the approval of the board, permission shall be granted the lessee to secure the desired water right for the land and to place the same under irrigation.

(2) If such water right becomes a permanent and valuable improvement, then in case of the sale or lease of the lands to other parties, the former lessee shall be entitled to receive compensation in the amount of the reasonable value thereof, as in the case of other improvements, from the new lessee or the purchaser.

(3) These provisions shall not be so construed as to make the state liable to the lessee for the payment of the cost or value of such irrigation improvements.

History: **En. Sec. 33, Ch. 60, L. 1927; re-en. Sec. 1805.33, R.C.M. 1935; R.C.M. 1947, 81-420.**

Part 2

Leasing Procedure

77-6-201. Appraisal of grazing lands. (1) The department shall appraise the grazing lands owned by the state as to their animal-unit-month carrying capacity and make and preserve records thereof in its office and from time to time reexamine these lands as to their animal-unit-month carrying capacity so as to keep the records thereof in its office reasonably accurate.

(2) In appraising these grazing lands the following factors shall be taken into consideration:

(a) inventory of the forage resources—kind, amount, and location of vegetation;

(b) accessibility and usability of this forage resource as influenced by topography, availability of stock water, and season of usability;

(c) condition of soils—the erosion situation;

(d) other and related resources such as timber, game animals, need for watershed protection;

(e) record of needed improvements and facilities—fuel and stock water, revegetation, rodent control, trails, fences, and the like;

(f) pertinent facts and figures submitted by stockmen living in the area and directors of state grazing districts including the land or in its vicinity;

(g) carrying capacity set for similar land in a state grazing district in which the land is situated.

History: En. Sec. 4, Ch. 207, L. 1945; amd. Sec. 11, Ch. 428, L. 1973; R.C.M. 1947, 81-404.

77-6-202. Lease by competitive bidding. When the department receives an application to lease an unleased tract, it shall advertise for bids on the tract. The tract shall be leased to the highest bidder unless the board determines that the bid is not in the state's best interest for the reasons set forth in 77-6-205(2). If the high bid is rejected, the board shall set forth the reasons for the rejection in writing. The lease shall then be issued, at a rental to be determined by the board, to the first bidder willing to pay the board determined rental whose name is selected through a random selection process from all bidders on the tract.

History: En. Sec. 21, Ch. 60, L. 1927; re-en. Sec. 1805.21, R.C.M. 1935; amd. Sec. 1, Ch. 65, L. 1939; amd. Sec. 1, Ch. 20, L. 1941; amd. Sec. 5, Ch. 207, L. 1945; amd. Sec. 3, Ch. 260, L. 1963; amd. Sec. 12, Ch. 428, L. 1973; amd. Sec. 1, Ch. 311, L. 1977; R.C.M. 1947, 81-405(3).

77-6-203. Bid deposit. (1) A person bidding for the lease of state lands shall deposit with the department, as evidence of good faith, a certified check, cashier's check, or money order in an amount equal to 20% of the annual rental bid in the case of grazing land and an amount equal to $1 per acre for each acre of agricultural land contained in the lease in the case of agricultural land on which the bid is made on a crop share basis.

(2) The department shall retain the deposit of the successful bidder, apply it on the rental for the first year of the lease only, and return any balance of the deposit at the end of the first year to the successful bidder. The department shall return the deposits of the unsuccessful bidders.

(3) If the successful bidder fails to execute the lease for any reason, his deposit shall be forfeited and deposited by the department to the credit of the proper interest and income account in the federal and private revenue fund.

History: En. Sec. 1, Ch. 185, L. 1963; amd. Sec. 29, Ch. 428, L. 1973; amd. Sec. 1, Ch. 133, L. 1974; R.C.M. 1947, 81-436.

77-6-204. Notification of termination of lease. When a lease expires or is canceled, the department shall immediately notify the holder of the lease and all persons who have expressed an interest in leasing the land during or immediately preceding the term of the expired or canceled lease.

History: En. Sec. 23, Ch. 60, L. 1927; amd. Sec. 2, Ch. 42, L. 1933; re-en. Sec. 1805.23, R.C.M. 1935; amd. Sec. 2, Ch. 65, L. 1939; amd. Sec. 5, Ch. 260, L. 1963; amd. Sec. 18, Ch. 240, L. 1971; amd. Sec. 30, Ch. 94, L. 1973; amd. Sec. 14, Ch. 428, L. 1973; amd. Sec. 3, Ch. 135, L. 1974; R.C.M. 1947, 81-407(part).

77-6-205. Renewal leases. (1) A lessee of state land classed as agricultural, grazing, town lot or city lot who has paid all rentals due from him to the state and who has not violated the terms of his lease, is entitled to have his lease renewed for a 5- or 10-year period at any time within 30 days prior to its expiration if no other applications for lease of the land have been received 30 days prior to the expiration of his lease. The renewal shall be at the rental rate provided by law for the renewal period and subject to any other conditions at the time of the renewal imposed by law as terms of the lease. If other applications have been received, the holder of the lease has the preference right to lease the land covered by his former lease by meeting the highest bid made by any other applicant. Applications for lease of lands in this section shall be given preference in the order of their receipt at the office of the department.

(2) The board shall accept the highest bid. If the lessee exercises the preference right and believes the bid to be excessive, he may request an administrative hearing. Such request must contain a statement of reasons why the lessee believes the bid not to be in the state's best interest and must be accompanied by a deposit equal to 20% of the competitive bid in the case of grazing lands and $1 per acre in the case of agricultural lands. The department shall grant the request for a hearing if it determines that the statement indicates evidence that the bid may not be in the state's best interests. The board may, after the hearing, reduce the rental from the amount bid if the lessee shows that the bid is not in the best interest of the state because it is above community standards for a lease of such land, would cause damage to the tract, or impair its long-term productivity. If the board reduces the bid, it shall set forth its findings and conclusions in writing and so inform the lessee and competitive bidder. It is the duty of the board to secure the best lessees possible, so that the state may receive the maximum return possible with the least injury occurring to the land.

History: En. Sec. 21, Ch. 60, L. 1927; re-en. Sec. 1805.21, R.C.M. 1935; amd. Sec. 1, Ch. 65, L. 1939; amd. Sec. 1, Ch. 20, L. 1941; amd. Sec. 5, Ch. 207, L. 1945; amd. Sec. 3, Ch. 260, L. 1963; amd. Sec. 12, Ch. 428, L. 1973; amd. Sec. 1, Ch. 311, L. 1977; R.C.M. 1947, 81-405(1), (2).

77-6-206. Withdrawal of lands from leasing. Notwithstanding the foregoing provisions, the board may withdraw any agricultural or grazing land from further leasing for such period as the board determines to be in the best interest of the state. Bids for leases and applications for renewals of leases of state agricultural lands or state grazing lands shall be in writing and sealed and shall be submitted to the board at the office of the department.

History: En. Sec. 21, Ch. 60, L. 1927; re-en. Sec. 1805.21, R.C.M. 1935; amd. Sec. 1, Ch. 65, L. 1939; amd. Sec. 1, Ch. 20, L. 1941; amd. Sec. 5, Ch. 207, L. 1945; amd. Sec. 3, Ch. 260, L. 1963; amd. Sec. 12, Ch. 428, L. 1973; amd. Sec. 1, Ch. 311, L. 1977; R.C.M. 1947, 81-405(4).

77-6-207. Form of lease — bond optional. The general form of lease to state lands shall be prescribed by the board, and no changes in the form for these leases may be made without the approval of the board. All leases shall be issued in duplicate, one copy shall be mailed to the lessee, and one copy shall be preserved by the department. Unless the board decides otherwise, these leases shall be issued without bonds, but the board may require a bond and prescribe the form and conditions thereof whenever it considers it necessary.

History: En. Sec. 29, Ch. 60, L. 1927; re-en. Sec. 1805.29, R.C.M. 1935; amd. Sec. 19, Ch. 428, L. 1973; R.C.M. 1947, 81-416.

77-6-208. Assignment of leases. Leases to state lands may be assigned on blanks prescribed by the department, but no assignment is binding on the state unless the assignment is filed with the department, approved by it and payment made of the assignment fee under 77-1-302. Preference shall always be given to the applicant who wants the land for his own individual use, so that the full advantage coming from the leasing and use of the lands may reach those who actually till the soil and so that they are not compelled to pay a higher rental than that due the state. If a lessee subleases state lands on terms less advantageous to the sublessee than the terms given by the state or subleases state lands without filing a copy of the sublease with the department and without receiving its approval, the department shall cancel the lease, subject to the appeal procedure provided in 77-6-211.

History: En. Sec. 32, Ch. 60, L. 1927; re-en. Sec. 1805.32, R.C.M. 1935; amd. Sec. 1, Ch. 14, L. 1937; amd. Sec. 12, Ch. 207, L. 1945; amd. Sec. 18, Ch. 121, L. 1965; amd. Sec. 3, Ch. 22, L. 1971; amd. Sec. 4, Ch. 27, L. 1971; amd. Sec. 21, Ch. 428, L. 1973; R.C.M. 1947, 81-419.

77-6-209. Change from grazing lease to agricultural lease. (1) When land is leased for grazing purposes and the lessee desires to cultivate any part of the land, he shall, before doing any such cultivation, make application to the department stating how much land he desires to cultivate and showing the location in the section of the land and agree that for the remainder of the term of the lease the annual rental shall be at the rate of the original lease until such time as the first crop is harvested from the cultivated portion of the lease. At the time of the first harvest, the lease shall be at the original rate for that portion remaining as grazing land plus the crop share rental for that portion cultivated. If any person cultivates lands leased for grazing purposes without first securing the right to do so under this section, the department shall either cancel the lease, subject to the appeal procedure provided in 77-6-211, or require the lessee to pay twice the regular agricultural rental on the land so cultivated in addition to the grazing rental.

(2) The provisions of this section shall be incorporated in every lease.

History: En. Sec. 28, Ch. 60, L. 1927; re-en. Sec. 1805.28, R.C.M. 1935; amd. Sec. 9, Ch. 207, L. 1945; amd. Sec. 1, Ch. 120, L. 1963; amd. Sec. 2, Ch. 27, L. 1971; amd. Sec. 17, Ch. 428, L. 1973; R.C.M. 1947, 81-414.

77-6-210. Cancellation of leases. The department may cancel a lease for any of the following causes: fraud, misrepresentation, or concealment of facts relating to its issue, which if known would have prevented its issue in the form or to the party issued; using the land for other purposes than those authorized by the lease; and for any other cause which in the judgment of the department makes the cancellation of the lease necessary in order to do justice to all parties concerned and to protect the interests of the state. Such cancellation does not entitle the lessee to any refund of rentals paid or exemption from the payment of any rentals, penalties, or other compensation due the state.

History: En. Sec. 36, Ch. 60, L. 1927; re-en. Sec. 1805.36, R.C.M. 1935; amd. Sec. 5, Ch. 27, L. 1971; amd. Sec. 23, Ch. 428, L. 1973; R.C.M. 1947, 81-422(1).

77-6-211. Procedure to cancel lease — appeal. (1) When the department cancels a lease pursuant to 77-6-113, 77-6-208, 77-6-209, or 77-6-210, it shall immediately notify the lessee by certified mail of the cancellation and the reasons therefor. The date of cancellation is 15 days from the date the notice is received by the lessee.

(2) The lessee has 15 days after the receipt of the notice to file with the department a notice of appeal for a hearing before the board. If notice of appeal is filed, the lease remains in effect until the decision of the board. Within 10 days after notice of appeal has been filed, the department shall set the time and place of hearing and shall so notify the lessee. The board may, after 10 days' notice to the lessee, change the time and place of hearing.

(3) Under rules it adopts, the board shall conduct an open hearing to determine whether the lease should be reinstated. The burden of proof is on the lessee to show why the lease should not be canceled. If the lease is reinstated, all of the lessee's rights and privileges thereunder shall be preserved; if not, the land shall be open for re-leasing as provided by law. If the board finds that the terms of the lease have been violated but in its judgment the violation is not serious enough to warrant cancellation, it may reinstate the lease and assess a penalty up to three times the annual rental against the lessee.

History: En. Sec. 36, Ch. 60, L. 1927; re-en. Sec. 1805.36, R.C.M. 1935; amd. Sec. 5, Ch. 27, L. 1971; amd. Sec. 23, Ch. 428, L. 1973; R.C.M. 1947, 81-422(2), (3).

Part 3

Improvements

77-6-301. Improvements authorized. A lessee of state lands may place upon the lands a reasonable amount of improvements directly related to conservation of the land or necessary for proper utilization of it. These improvements may consist of fences, cultivation, improvement of the land itself, irrigation ditches, sheds, wells, reservoirs, and similar improvements.

History: En. Sec. 34, Ch. 60, L. 1927; re-en. Sec. 1805.34, R.C.M. 1935; amd. Sec. 4, Ch. 257, L. 1965; amd. Sec. 22, Ch. 428, L. 1973; R.C.M. 1947, 81-421(part).

77-6-302. Compensation for improvements. (1) When another person becomes the lessee of such lands, he shall pay to the former lessee the reasonable value of these improvements at the time the new lessee takes possession.

(2) If the former lessee and the new lessee are unable to agree on the reasonable value of the improvements, the value shall be ascertained and fixed as provided in 77-6-306.

History: **En. Sec. 34, Ch. 60, L. 1927; re-en. Sec. 1805.34, R.C.M. 1935; amd. Sec. 4, Ch. 257, L. 1965; amd. Sec. 22, Ch. 428, L. 1973; R.C.M. 1947, 81-421(part).**

77-6-303. Determination of compensation. (1) In determining the value of these improvements, consideration shall be given to their original cost, their present condition, their suitableness for the uses ordinarily made of the lands on which they are located, and to the general state of cultivation of the land, its productive capacity as affected by former use, and its condition with reference to the infestation of noxious weeds. Consideration shall be given to all actual improvements and to all known effects that the use and occupancy of the land have had upon its productive capacity and desirableness for the new lessee.

(2) However, if any of the improvements consists of breaking (meaning the original plowing of the land) and 1 year's crops have been raised on the land after the breaking, the compensation for the breaking may not exceed $2.50 per acre, and if two or more crops have been raised on the land after the breaking, the breaking shall not be considered as an improvement to the land.

History: **En. Sec. 34, Ch. 60, L. 1927; re-en. Sec. 1805.34, R.C.M. 1935; amd. Sec. 4, Ch. 257, L. 1965; amd. Sec. 22, Ch. 428, L. 1973; R.C.M. 1947, 81-421(part).**

77-6-304. Removal of improvements. The former lessee may, however, remove the movable improvements on the land and dispose of them to parties other than the lessee. If he fails to remove the improvements from the land within 60 days from the date of the expiration of his lease, all of the improvements become the property of the state unless the department for good cause grants additional time for their removal.

History: **En. Sec. 34, Ch. 60, L. 1927; re-en. Sec. 1805.34, R.C.M. 1935; amd. Sec. 4, Ch. 257, L. 1965; amd. Sec. 22, Ch. 428, L. 1973; R.C.M. 1947, 81-421(part).**

77-6-305. Settlement regarding improvements prerequisite to issuance of new lease. Before a lease is issued to the new lessee, he shall show that he has paid the former lessee the value of the improvements as agreed upon by them or as fixed and determined under 77-6-306 or that he has offered to pay the value of the improvements as so fixed and determined or that the former lessee elects to remove the improvements.

History: **En. Sec. 34, Ch. 60, L. 1927; re-en. Sec. 1805.34, R.C.M. 1935; amd. Sec. 4, Ch. 257, L. 1965; amd. Sec. 22, Ch. 428, L. 1973; R.C.M. 1947, 81-421(part).**

77-6-306. Arbitrators to fix value of improvements. (1) If the owner of any improvements on state lands of the type authorized by law at the time they were placed thereon desires to sell these improvements to the new lessee and they are unable to agree on the value thereof, the value shall be ascertained and fixed by three arbitrators, one of whom shall be appointed by the owner of the improvements, one by the new lessee, and the third by the two arbitrators so appointed. The value of the improvements shall be ascertained and fixed as this part provides.

(2) The reasonable compensation that the arbitrators may fix shall be paid in equal shares by the owner of the improvements and the new lessee.

(3) The value of the improvements so ascertained and fixed is binding on both parties, however, if either party is dissatisfied with the valuation so fixed, he may within 10 days appeal from their decision to the department which shall examine the improvements, and its decision shall be final. The department shall charge and collect the actual cost of the reexamination to the owner and the new lessee in such proportion as in its judgment justice may demand.

History: En. Sec. 22, Ch. 60, L. 1927; re-en. Sec. 1805.22, R.C.M. 1935; amd. Sec. 4, Ch. 260, L. 1963; Sec. 81-406, R.C.M. 1947; redes. 81-421.1 and amd. by Sec. 13, Ch. 428, L. 1973; R.C.M. 1947, 81-421.1.

Part 4

Pledges and Mortgages of Leasehold Interests

77-6-401. Pledge or mortgage of leasehold interest in state lands. Any lessee of a grazing or agricultural lease of state lands is hereby authorized to pledge said lease or mortgage his leasehold interest in said lands.

History: En. Sec. 1, Ch. 52, L. 1947; R.C.M. 1947, 81-425.

77-6-402. Filing with board required. The pledgee of such lease or the mortgagee of such leasehold interest shall, within 30 days after receipt of the pledge agreement or mortgage, file it or a certified copy thereof with the department.

History: En. Sec. 2, Ch. 52, L. 1947; amd. Sec. 21, Ch. 121, L. 1965; amd. Sec. 4, Ch. 22, L. 1971; amd. Sec. 26, Ch. 428, L. 1973; R.C.M. 1947, 81-426.

77-6-403. Transfer of lease. Upon due proof of the acquisition of such lease or leasehold interest by any person under or pursuant to such pledge agreement or mortgage, the board shall transfer said lease to said person, who shall thereupon be subject to all the conditions, obligations, and liabilities and entitled to all the rights and privileges provided for in said lease.

History: En. Sec. 3, Ch. 52, L. 1947; R.C.M. 1947, 81-427.

77-6-404. Proof of termination of pledge or mortgage to be filed. The lessee of any grazing or agricultural lease of or leasehold interest in state lands which is pledged or mortgaged as provided in this part shall, within 30 days after payment of the indebtedness secured thereby or within 30 days after the pledge agreement is terminated or the leasehold interest is released from the mortgage, file with the department proof of that fact.

History: En. Sec. 4, Ch. 52, L. 1947; amd. Sec. 20, Ch. 121, L. 1965; amd. Sec. 5, Ch. 22, L. 1971; amd. Sec. 27, Ch. 428, L. 1973; R.C.M. 1947, 81-428.

Part 5

Rental Provisions

77-6-501. Agricultural leases. (1) As to agricultural lands, all leases shall be continued or made upon a crop share rental basis of not less than one-fourth of the annual crops to the state or the usual landlord's share prevailing in the district, whichever is greater. The board may, however, approve special crop share rentals of less than one-fourth for high production cost crops such as but not limited to potatoes and sugar beets. The board may not delegate the authority to approve such special crop share rentals.

(2) In unusual cases the department may authorize a lease upon other basis than crop share, but in these unusual cases the rental shall at least equal the value of the usual landlord's share prevailing in the district, and the department shall set forth in the records the unusual conditions of the case and the rental to be charged.

History: En. Sec. 20, Ch. 60, L. 1927; re-en. Sec. 1805.20, R.C.M. 1935; amd. Sec. 2, Ch. 207, L. 1945; amd. Sec. 1, Ch. 254, L. 1947; amd. Sec. 2, Ch. 201, L. 1949; amd. Sec. 2, Ch. 260, L. 1963; amd. Sec. 2, Ch. 257, L. 1965; amd. Sec. 10, Ch. 428, L. 1973; amd. Sec. 1, Ch. 134, L. 1974; amd. Sec. 2, Ch. 135, L. 1974; R.C.M. 1947, 81-402(part).

77-6-502. Grazing leases. (1) The rental rate for leasing all state grazing lands shall be based upon the appraised animal-unit-month carrying capacity of the land as provided in 77-6-507.

(2) If the legislature raises the rentals for state grazing lands during the term of any leases of grazing land which are not issued as a result of competitive bidding, the lessee shall, for the years after the increase becomes effective, pay the increased rental, and the terms of grazing leases shall so provide.

History: (1)En. Sec. 20, Ch. 60, L. 1927; re-en. Sec. 1805.20, R.C.M. 1935; amd. Sec. 2, Ch. 207, L. 1945; amd. Sec. 1, Ch. 254, L. 1947; amd. Sec. 2, Ch. 201, L. 1949; amd. Sec. 2, Ch. 260, L. 1963; amd. Sec. 2, Ch. 257, L. 1965; amd. Sec. 10, Ch. 428, L. 1973; amd. Sec. 1, Ch. 134, L. 1974; amd. Sec. 2, Ch. 135, L. 1974; Sec. 81-402, R.C.M. 1947; (2)En. Sec. 23, Ch. 60, L. 1927; amd. Sec. 2, Ch. 42, L. 1933; re-en. Sec. 1805.23, R.C.M. 1935; amd. Sec. 2, Ch. 65, L. 1939; amd. Sec. 5, Ch. 260, L. 1963; amd. Sec. 18, Ch. 240, L. 1971; amd. Sec. 30, Ch. 94, L. 1973; amd. Sec. 14, Ch. 428, L. 1973; amd. Sec. 3, Ch. 135, L. 1974; Sec. 81-407, R.C.M. 1947; R.C.M. 1947, 81-402(part), 81-407(part).

77-6-503. Leases of city lots. As to town and city lots owned by the state, the fair rental value thereof shall be determined from time to time by the department with the approval of the board and a record made thereof, and such town or city property may be leased at its current appraised rental value for terms not to exceed 25 years.

History: En. Sec. 20, Ch. 60, L. 1927; re-en. Sec. 1805.20, R.C.M. 1935; amd. Sec. 2, Ch. 207, L. 1945; amd. Sec. 1, Ch. 254, L. 1947; amd. Sec. 2, Ch. 201, L. 1949; amd. Sec. 2, Ch. 260, L. 1963; amd. Sec. 2, Ch. 257, L. 1965; amd. Sec. 10, Ch. 428, L. 1973; amd. Sec. 1, Ch. 134, L. 1974; amd. Sec. 2, Ch. 135, L. 1974; R.C.M. 1947, 81-402(part).

77-6-504. Lease rentals for part year. Lease rentals for agricultural or grazing state land, where the lease term begins after February 28 in the initial year of the lease, shall be for the whole of the yearly rate for the fractional part of the initial year if the lease term begins prior to July 1 in such fractional part of year, and for one-half the yearly rate for such fractional part of the year if the lease term begins after June 30 in the initial year and prior to the succeeding February 28.

History: En. Sec. 7, Ch. 207, L. 1945; R.C.M. 1947, 81-410.

77-6-505. No reduction for summer fallow. No credit or reduction or refund in rental shall be allowed any lessee of agricultural or grazing state land on account of summer fallow.

History: En. Sec. 8, Ch. 207, L. 1945; R.C.M. 1947, 81-411.

77-6-506. Date when rental due — cancellation for nonpayment. The rental for the first year of the lease shall be paid at or before the time of the execution of the lease; however, in the case of leases which take effect on and after October 1 and before the expiration of the coming February, both the rental for the fractional year and for the next full year beginning March 1 shall be paid and collected at the time of issuing the lease. If the United States is the lessee of state lands for grazing purposes, the rental shall be payable at the end of each year of the lease. The rental for each succeeding year on leases hereafter issued, with the exception of leases wherein the United States is the lessee, is due and payable before March 1, and if not paid by April 1 the lease is canceled. The department shall notify the lessee by letter addressed to the post-office address given in the lease of the cancellation, and the land is then open for lease to other applicants.

History: En. Sec. 26, Ch. 60, L. 1927; re-en. Sec. 1805.26, R.C.M. 1935; amd. Sec. 1, Ch. 197, L. 1943; amd. Sec. 2, Ch. 22, L. 1971; amd. Sec. 15, Ch. 428, L. 1973; R.C.M. 1947, 81-412.

77-6-507. Formula for fixing annual rental. (1) In this section:

(a) "animal unit" means one cow, one horse, five sheep, or five goats;

(b) "animal-unit-month carrying capacity" means that amount of natural feed necessary for the complete subsistence of one animal unit for 1 month.

(2) The board shall establish the per annum rental rate per section of all grazing lands which are the property of the state upon the animal-unit-month basis as provided in this section.

(3) In fixing the minimum annual rental per section, the following formula shall be used:

(a) The base rental shall be computed by multiplying six times the average price per pound of beef cattle on the farm in Montana for the previous year times the animal-unit-month carrying capacity of the land.

(b) The minimum annual rental for grazing lands with an annual carrying capacity of more than 14 and less than 20 animal units per section is the base rental.

(c) The minimum annual rental for grazing lands with an annual carrying capacity of more than 19 animal units per section is 10 cents more than the base rental.

(d) The minimum annual rental for grazing lands with an annual carrying capacity of less than 15 animal units per section is 10 cents less than the base rental.

(4) The carrying capacity of the land to be used in the above formula shall be in accordance with the determinations of the department made under 77-6-201.

(5) The average price per pound of beef cattle on the farm in Montana shall be taken from statistics published by the United States department of agriculture current at the time of computation of the rental or from other reliable sources current at such time.

History: En. Sec. 2, Ch. 190, L. 1949; amd. Sec. 1, Ch. 229, L. 1951; amd. Sec. 1, Ch. 284, L. 1959; amd. Sec. 6, Ch. 260, L. 1963; amd. Sec. 1, Ch. 97, L. 1973; amd. Sec. 28, Ch. 428, L. 1973; R.C.M. 1947, 81-433; amd. Sec. 1, Ch. 259, L. 1979.

77-6-508. Effect of competitive bidding. Whenever competitive bidding shall establish a rental price higher than the rental price established by the above formula, the board in leasing such lands shall incorporate in said lease such conservation requirements as are deemed necessary for the protection of such grass or forage crops.

History: **En. Sec. 3, Ch. 190, L. 1949; R.C.M. 1947, 81-434.**

TITLES 78 AND 79

RESERVED

DOES NOT
CIRCULATE